

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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W. E. JAMES AND AGNES JAMES,  
Appellants,  
vs.

O. A. NELSON, as an individual, O. A. NELSON,  
as a trustee, N. P. NELSON, CHARLES  
HAWKINS and CHARLES McMAHAN,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Territory of Alaska, Third Division.

FILED

OCT 1 - 1901

PAUL H. HODGINS  
CLERK



**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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W. E. JAMES AND AGNES JAMES,  
Appellants,  
vs.

O. A. NELSON, as an individual, O. A. NELSON,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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O. A. Nelson, as trustee, N. P. Nelson, Charles  
Hawkins and Charles McMahan, defend-  
ants and appellees. [1\*]

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court for the Territory of Alaska,  
Third Division.

No. S 356.

W. E. JAMES and AGNES JAMES,  
Plaintiffs,  
vs.

O. A. NELSON, as an individual, O. A. NELSON  
as trustee, N. P. NELSON, CHARLES HAW-  
KINS, and CHARLES McMAHAN,  
Defendants.

### COMPLAINT.

Come now the plaintiffs above named and for  
their cause of action against the above named de-  
fendants and each of them, complain and allege:

#### I.

That on and prior to the 4th day of February,  
1930, the plaintiff W. E. James, by the right of dis-  
covery and location of certain placer mining ground  
and held by the performance of annual labor, sub-  
ject to the paramount title of the United States of  
America, was the owner of and entitled to the  
immediate possession of the following described  
placer mining claims, to-wit:

“Those certain placer mining claims, situated  
upon Bonanza Creek, a tributary of Cathenda  
Creek; on Gold Run Creek, a tributary of Gla-  
cier Creek; on Cathenda Creek and on Little  
Eldorado Creek, a tributary of Bonanza Creek;



all of said claims being in the White River Mining District of the Chisana Recording District, Territory of Alaska, and known and called as follows, to-wit:

Discovery of Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

No. 5 Above Discovery on Bonanza Creek

No. 6 Above Discovery on Bonanza Creek

No. 14 Above Discovery on Bonanza Creek

No. 15 Above Discovery on Bonanza Creek

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza  
Creek

Discovery on Gold Run Creek

Discovery Annex on Gold Run Creek

No. 1 Cathenda Creek [2]

No. 1 Little Eldorado Creek

No. 3 Little Eldorado Creek

No. 1 Fraction Little Eldorado Creek.

No. 1 Gold Bug Bench on Little Eldorado  
Creek

No. 2 Gold Bug Bench on Little Eldorado  
Creek

No. 3 Gold Bug Bench on Little Eldorado  
Creek

James Bench on Little Eldorado Creek,  
the notices of which are all of record in the  
office of the Recorder for Chisana Recording  
Precinct, at Chisana, Alaska, to which records  
reference is hereby made for a further and  
more complete description of said claims, and  
to saw mill and cabin located near the Post  
Office of the Town of Chisana, Alaska, and to

one large cabin located in the town of Chisana, Alaska, and known as the James Cabin.”

## II.

That on the 5th day of February, 1930, W. E. James, plaintiff herein and Agnes James, his wife, as parties of the first part, did make, execute and deliver a certain instrument in writing to the First Bank of Cordova, a banking corporation organized and existing under the laws of the Territory of Alaska, and doing business at Cordova in said Territory of Alaska, as the party of the second part, which said instrument in writing was given as security for the payment of the sum of Five Thousand One Hundred and Fifty and no/100 Dollars (\$5,150.00) in lawful money of the United States, together with interest thereon at the rate of twelve (12%) per centum per annum, according to the terms and conditions of four (4) certain promissory notes due one year after date, made by the parties of the first part payable to the party of the second part or order, and each of said notes providing for the payment of a reasonable sum to be fixed by the court, all as more fully appears from the original said mortgage, which said mortgage was and is recorded on September 30, 1932, in the Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, Commissioner and ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, a certified copy of which is hereto attached and made a part of this complaint, marked

Exhibit A, and by reference hereto made a part hereof.

### III.

That the plaintiffs, in the conduct of their mining operations upon the property hereinbefore described, incurred certain financial ob- [3] ligations, particularly to the Cash Store of Chitina, owned or managed or conducted by one O. A. Nelson, and on or about the 11th day of April, 1933, upon the representations and requests of the said O. A. Nelson, the said plaintiffs W. E. James and Agnes James did make and execute a conveyance in writing, transferring to the said O. A. Nelson as trustee, the right, title and interest of the said plaintiffs, the said O. A. Nelson, however, being designated in said instance as trustee; and plaintiffs aver that the trust created by such instrument was to O. A. Nelson solely as agent for the parties of the first part, for the purpose of permitting the said O. A. Nelson to negotiate with said First Bank of Cordova and *do* deliver title of and to said mining properties to the said First Bank of Cordova; and a copy of such instrument so described is attached to this complaint, marked Exhibit B, and by reference hereto made a part hereof.

### IV.

Plaintiffs further allege that shortly prior to the 11th day of April, 1933, an action was instituted in the District Court for the Territory of Alaska by the First Bank of Cordova as plaintiff against the

plaintiffs in this action, W. E. James and Agnes James, for the purpose of securing a judgment of foreclosure and subsequent sale of the mining properties of these plaintiffs described in and covered by said mortgage, and which action was and is at the time of the filing of this complaint now pending on the docket of said court, notwithstanding the fact that on said 11th day of April, 1933, at Chisana, Alaska, the said O. A. Nelson as trustee, under the conveyance hereinbefore described, did accept such conveyance as conditional and did then and is on behalf of said First Bank of Cordova being thereunder authorized by said Bank, did agree to dismiss said action so pending as cause Number 594 on the docket of the Third Division Court, all as a partial consideration for the conveyance by plaintiffs herein to said Bank of said placer mining property so embraced as hereinbefore set forth in said mortgage, hereinbefore described, of the 5th day of February, 1930. [4]

## V.

That in addition to the matters herein set forth as cause for the transfer by the said W. E. James and Agnes James of their placer mining property as described in said mortgage, hereinbefore referred to, the said defendant O. A. Nelson individually and as trustee for the First Bank of Cordova, being thereunder authorized to also pay certain outstanding indebtedness due to specifically named creditors of the said W. E. James, as evidenced in a certain memorandum in writing as furnished to the said

O. A. Nelson by the plaintiff Agnes James, at Chisana, Alaska, in the presence of witnesses on or about April 11, 1933; and the said O. A. Nelson, individually and as trustee, did further state and agree with the said plaintiff W. E. James that in consideration of the execution of a deed and conveyance to the said O. A. Nelson as trustee, that the said O. A. Nelson would pay all such outstanding indebtedness of the said W. E. James.

## VI.

That the fraudulent representation and inducement of the said O. A. Nelson to Plaintiffs consisted of the following:

(a) That the First Bank of Cordova was taking over the property and that said Bank and the Chitina Cash Store, and O. A. Nelson as an individual, assumed the claims and indebtedness against the property herein described.

(b) That the conveyance to O. A. Nelson was a conveyance dated April 11, 1933, to the said O. A. Nelson, only for making the transfer of said property to the said First Bank of Cordova in the event and in consideration of the dismissal of the action pending in the District Court for the Territory of Alaska, Third Division, and the release, dismissing and satisfaction of the mortgage of February 5, 1930, so given as hereinbefore set forth by the *plaintiff* W. E. James and Agnes James, as parties of the first part to the said The First Bank of Cordova, party of the second part, and the satisfaction of said mortgage. [5]



(c) That the said O. A. Nelson did state and agree to and with the said W. E. James and Agnes James on the 11th day of April 1933, that in the event should the First Bank of Cordova, of Cordova, Alaska, not take over the placer mining properties of the plaintiffs in satisfaction of the mortgage, that he, the said O. A. Nelson, would return by the first mail to the said W. E. James said instrument of conveyance.

(d) And the defendant O. A. Nelson by fraudulent representation procured and induced the plaintiff to execute and deliver to the defendant O. A. Nelson, as trustee, a deed of the placer mining claims, hereinbefore described, conveying the same to the said defendant O. A. Nelson as trustee, by fraudulently representing to the plaintiffs that said deed of conveyance was in full satisfaction of all indebtedness outstanding and existing against the plaintiffs and/or the said W. E. James and Agnes James, husband and wife, and that the said The First Bank of Cordova would hold title of said ground in trust until said debts were paid and then return said mining ground to the said plaintiffs in a period of time stated by said O. A. Nelson to be a period of five years, and, plaintiffs relying upon said representations of the said O. A. Nelson, as trustee, did deliver such deed as and for the purpose herein stated and for no other purpose whatsoever.

## VII.

That on or about the 17th day of December, 1933, the defendant O. A. Nelson executed and gave to

the defendant N. P. Nelson, some sort of a lease or lay permitting the said N. P. Nelson to work and operate a portion of the mining claims of the plaintiffs hereinbefore described in this complaint, and to extract the gold therefrom, all without the knowledge and consent of the plaintiffs and against their approval or authority.

### VIII.

And that while the plaintiffs were such owners and entitled to the possession of all the above described placer mining ground, the said defendant N. P. Nelson unlawfully and wrongfully entered upon said placer min- [6] ing ground, ousted the plaintiffs therefrom and ever since that day has wrongfully and unlawfully withheld and still and now wrongfully withholds the possession of said property from the plaintiffs, and that the plaintiffs were on said date in possession of said property and entitled to the immediate possession thereof, all subject to the paramount title of the United States.

### IX.

That on or about the 17th day of December, 1933, the defendant O. A. Nelson as trustee, executed and delivered to the defendant Charles Hawkins some sort of a lease or lay permitting the said Charles Hawkins to work and operate a portion of the mining claims of the plaintiffs hereinbefore described in this complaint, and to extract the gold therefrom, all without the knowledge and consent of the plaintiffs and against their approval or authority and

without authority on the part of the said O. A. Nelson so to do.

### X.

And that while the plaintiffs were such owners and entitled to the possession of all the above described placer mining ground, the said defendant Charles Hawkins unlawfully and wrongfully entered upon said placer mining ground, ousted the plaintiffs therefrom and ever since the 17th day of December, 1933, has wrongfully and unlawfully withheld and still and now wrongfully withholds the possession of said property from the plaintiffs, and the plaintiffs were on said date in possession of said property and entitled to the immediate possession thereof, all subject to the paramount title of the United States.

### XI.

That on or about the 17th day of December, 1933, the defendant O. A. Nelson as trustee, executed and delivered to Charles McMahan a pretended lease or lay permitting the said Charles McMahan to work and operate a portion of the mining claims of the plaintiffs hereinbefore described in this complaint and to extract the gold therefrom, all without the knowledge and consent of the plaintiffs and against their approval or authority and [7] without authority or right on the part of the said O. A. Nelson so to do.

### XII.

And that while the plaintiffs were such owners and entitled to the possession of all the above de-



scribed placer mining ground, the said defendant Charles McMahan unlawfully and wrongfully entered upon said placer mining ground, ousted the plaintiffs therefrom and ever since the 17th day of December, 1933, has wrongfully and unlawfully withheld and still and now wrongfully withholds the possession of said property from the plaintiffs, and the plaintiffs were on said date in possession of said property and entitled to the immediate possession thereof, all subject to the paramount title of the United States.

### XIII.

Plainiffs further aver that the value of the Chisana placer claims, described in this complaint, are in excess of the sum of Fifty Thousand Dollars (\$50,000.00) as a fair and approximate estimate of the ground not yet worked on said property, as based upon the recoveries of past years.

### XIV.

(a) That the said defendant O. A. Nelson, neither as an individual nor as a trustee, has delivered to said plaintiffs and particularly to the plaintiff W. E. James, the notes and mortgage executed by the plaintiffs as hereinbefore described in this complaint, nor satisfied and discharged nor caused to be satisfied and discharged said mortgage upon the records.

(b) And the said O. A. Nelson has wholly failed, neglected and refused to cause to be dismissed that certain action numbered C-594 on the docket of the District Court for the Territory of Alaska, Third

Division, and in which said case the First Bank of Cordova, Alaska, is the plaintiff and the plaintiffs herein, W. E. James and Agnes James, husband and wife, are defendants therein.

## XV.

That the defendant O. A. Nelson individually and as trustee, without right, continues and does exercise supervision and control over the placer mining properties of these plaintiffs; and under *an* pretended owner- [8] ship has issued leases and lays on said property for the purpose of the extraction of gold; and still further threatens to oust the plaintiffs from possession of said property and has refused and does now refuse to permit said plaintiffs to go upon said property or any part thereof, and has forcibly removed the plaintiff Mrs. Agnes James from her home and cabin, situate on said property, deprived her of her personal effects, clothing, furniture and articles of personal adornment, and refuses and still refuses to permit the plaintiff Agnes James to enter her own home in the cabin on the mining claim where she has resided for many years.

WHEREFORE, plaintiffs pray:

1. That the instrument described as a Deed and Bill of Sale, dated April 11, 1933, wherein W. E. James and Agnes James, husband and wife, of Chisana, Alaska, are designated parties of the first part and O. A. Nelson, trustee, of Chitina, Alaska,

designated as the party of the second part, be ordered delivered up and cancelled.

2. That this honorable court appoint a receiver of the property described in this complaint with the usual powers and duties and to be entitled to be present and receipt for all clean-ups of gold dust or gold nuggets extracted from the said mining property which may be mined or obtained by the said defendants and each of the whole of them, until the further order of this court in such regard made.

3. That pending the termination of this cause the said O. A. Nelson individually and as trustee, be restrained from in any manner exercising dominion, control and possession of the placer mining property described in this complaint.

4. And that plaintiffs have such other and further relief as may seem just and equitable to the court, and

5. For all proper costs and disbursements in this litigation including such reasonable sum as the court may allow as attorney's fees.

L. V. RAY,  
Attorney for Plaintiffs. [9]

United States of America,  
Territory of Alaska.—ss.

AGNES JAMES, being first duly sworn, on oath deposes and says that she is one of the plaintiffs in the above entitled action, that she has read the above and foregoing complaint, knows the contents thereof and believes the same to be true.

AGNES JAMES.

Subscribed and sworn to before me this 25 day of April, A. D., 1934.

[Notarial Seal]

L. V. RAY,

Notary Public in and for the Territory of Alaska.

My Commission expires March 24, 1938. [10]

## EXHIBIT A.

### MORTGAGE,

THIS INDENTURE, made this fifth day of February, 1930, between W. E. James and Agnes James, both residents of Chitina, Alaska, the parties of the first part, and the First Bank of Cordova, a banking corporation organized and existing under the laws of the Territory of Alaska, at Cordova, Alaska, the party of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Fifty one Hundred and Fifty Dollars (\$5,150) in lawful money of the United States to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, convey and confirm unto the said party of the second part, and to its successors and assigns, all of the right, title and interest, claim and demand, both legal and equitable, of, in and to those certain placer mining claims, situated upon Bonanza Creek, a tributary of Cathenda Creek; on Gold Run Creek, a tributary of Glacier Creek; on Cathenda Creek and on Little Eldorado Creek, a tributary of Bonanza Creek; all of the said claims

being in the White River Mining District of the Chisana Recording District, Territory of Alaska, and known as and called as follows, to-wit:

Discovery on Bonanza Creek,

No. 1 Above Discovery on Bonanza Creek

" 5 " " " "

" 6 " " " "

" 14 " " " "

" 15 " " " "

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza Creek.

Discovery on Gold Run Creek.

Discovery Annex on Gold Run Creek

No. 1 Cathenda Creek

No. 1 Little Eldorado Creek.

No. 2 " " "

No. 3 " " " [11]

No. 1 Fraction on Little Eldorado Creek

No. 1 Gold Bug Bench on Little Eldorado Creek.

No. 2 " " " " " "

No. 3 " " " " " "

James Bench on Little Eldorado Creek.

notices of location of which are duly of record in the office of the recorder of the said Chisana Recording Precinct, at Chisana, Alaska, to which records referance is hereby made for a further and more complete identification of said claims, and to sawmill and cabin located near the Post Office of the town of Chisana, and to one large cabin located in the town of Chisana and known as the James cabin.

To have and to hold the above described placer claims, saw mill and two cabins, together with all and singular the tenements, hereditaments, rights and privileges thereunto belonging or otherwise appertaining, and to all houses, buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said aforementioned properties, and together with all personal property of any and every kind and nature placed upon or connected with the said premises in the future, and all gold dust mined or extracted from the said placer mining claims, all of which gold dust the parties of the first part hereby promise to deliver to the party of the second part to apply upon said mortgage debt.

This conveyance is intended as a mortgage to secure the payment of Fifty One Hundred and Fifty Dollars (\$5,150.00) in lawful money of the United States, together with interest thereon at the rate of Twelve (12) per centum per annum and *and* all additional costs, charges and attorney fees, according to the terms and conditions of four (4) promissory notes, due one day after date, made by the parties of the first part, bearing interest from date of said notes at the rate of twelve (12) per centum per annum, one of the said notes being dated December 29th, 1929 for the principal sum of One Thousand Dollars (\$1,000.00), one of said notes being dated January 14th, 1930, for the principal sum of One Thousand Dollars (\$1,000.00), one of said notes being dated January 31st, 1930 for the principal sum of Three Hundred Dol- [12] lars (\$300.00), and



one of said notes being dated February 5th, 1930 for the principal sum of Twenty eight Hundred and Fifty Dollars (\$2,850) each of said four notes being payable to the order of the said party of the second part and each of said four notes providing for the payment of a reasonable attorney's fee to be fixed by the court in case suit of action being brought on said notes or any one of them.

But in case default is made in the payment of principal or interest of said promissory notes, or any one of them, or any part thereof, when the same shall become due and payable according to the terms and conditions thereof, then the said party of the second part, its successors and assigns, is hereby empowered to sell the said premises and property with all and every of the appurtenances, or any part thereof, in the manner prescribed by the law, and out of the money arising from the sale to retain the whole of the said principal and interest, whether the same shall then be due or not, together with the costs and charges of making such sale, and the over plus, if any there be, shall be paid by the party or parties making such sale, on demand, to the parties of the first part their heirs or assigns. And in any suit, action or other proceeding that may be had for the recovery of the principal sum, or interest, or both on said notes, or any one of them or any part thereof, or on this mortgage it shall and may be lawful for the party of the second part, its *successors* and assigns, to include in any judgment that may be recovered as *council* fees and *and* charges of attorneys and *council* employed in such suit, a reasonable sum to be fixed by the court, or in case of settlement

or payment being made after suit has been commenced and before final judgment or decree has been entered thereon, an attorney's fee of ten per centum of the amount paid in such settlement shall be taxed as part of the costs of such suit or action or proceeding, as well as all payments that the said party of the second part, its successors and assigns may be obliged to make for its, his or their security by insurance or on account of any taxes, liens, charges, incumberances, or assessments whatsoever on said premises, or any part thereof.

It is agreed that the said parties of the first part may remain [13] in possession of all of the personal property included within the *the* provisions of this mortgage, until in default.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals on the day and year hereinabove first written.

W. E. JAMES

AGNES JAMES.

Executed in the presence of

M. N. CHASE.

ANNA LEAK.

United States of America

Territory of Alaska

Third Division—ss.

THIS IS TO CERTIFY, that on this 5th day of February, 1930, before me the undersigned, a United States Commissioner, in and for Chitina Precinct, Third Division, Territory of Alaska, at Chitina, Alaska, duly appointed, qualified and sworn, personally appeared before me W. E. James



and Agnes James, each to me personally known, and to me known to be the identical individuals described in and who executed the within and foregoing mortgage, and they acknowledged to me, each for himself and herself, and not one for the other, that they executed the same voluntarily and freely for the uses and purposes therein mentioned.

WITNESS MY HAND and official seal the day and year in this certificate first above written.

[Seal]

O. A. NELSON

United States Commissioner.

United States of America

Territory of Alaska

Third Division—ss.

W. E. James and Agnes James, being first duly sworn, each for himself and herself, and not one for the other, deposes and says: I am one of the mortgagors named in the foregoing mortgage; that said mortgage is made in good faith to secure the amount named therein and without any design to hinder delay or defraud any creditor or creditors.

W. E. JAMES

AGNES JAMES.

Subscribed and sworn to before me this 5th day of February, 1930.

[Seal]

O. A. NELSON

United States Commissioner [14]

Filed for record by the First Bank of Cordova at  
4 P M Sept. 30, 1930.

O. A. NELSON,

Recorder.

United States of America  
Territory of Alaska  
Chitina Precinct.

I, O. A. NELSON, United States Commissioner and ex-officio Recorder for the Chitina Precinct, Territory of Alaska, hereby certify that the foregoing four typewritten pages is a true, full and exact copy of the therein named mortgage as the same appears in the records of this office.

[Commissioner's Seal]          O. A. NELSON,  
United States Commissioner, Chitina.

[15]

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## EXHIBIT B.

### DEED AND BILL OF SALE.

THIS INDENTURE, Made this 11th day of April, 1933, between W. E. James and Agnes James, husband and wife, of Chisana, Alaska, the parties of the first part, and O. A. Nelson, Trustee, of Chitina, Alaska, the party of the second part, WITNESSETH:

The said parties of the first part, for and in consideration of the sum of One (\$1.00) and other good and valuable consideration by them received do by these presents Grant, Bargain, Sell Convey and Confirm unto the said party of the second part, and to his heirs and assigns, the following Described Property:

Placer Mining Claims: Discovery on Bonanza Creek, No. 1 Above Discovery on Bonanza Creek, No. 5 Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 14 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, Discovery on Gold Run Creek, Discovery Annex on Gold Run Creek, No. 1 Chatenda Creek, No. 1 Little Eldorado Creek, No. 3 Little Eldorado Creek, Discovery Bench on Little Eldorado Creek, No. 1 Discovery Bench on Little Eldorado Creek, No. 2 Discovery Bench on Little Eldorado Creek, No. 3 Discovery Bench on Little *Eldorad* Creek, No. 1 Fraction on Little Eldorado Creek, No. 1 Gold Bug Bench on Little Eldorado Creek, No. 2 Gold Bug Bench on Little Eldorado Creek, No. 3 Gold Bug Bench on Little Eldorado Creek, and James Bench on Little Eldorado Creek; all situated on Gold Run and Bonanza Creeks and tributaries, in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and also together with a saw-mill and cabin located near the Post Office in the town of Chisana, Alaska, and one large cabin located in the town of Chisana and known as the James Cabin; and also together with all houses, buildings Pipe Giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith. To have and to hold the same, together with the dips, angles, spurs, ores minerals,

tenements, hereditaments and appurtenances [16] thereto belonging or in any wise appertaining, forever.

The said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, *executurs* and administrators, all and singular, the premises hereinabove conveyed, described and granted, or mentioned, with the appurtenances, unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will Warrant and forever Defend.

IN WITNESS WHEREOF, the said Parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal] W. E. JAMES,

[Seal] AGNES JAMES

Signed, Sealed and delivered in the presence of  
LUELLA JOHNSTON  
C. H. GILLAM.

Filed for record by O. A. Nelson at 10 AM on  
April 15th, 1933.

O. A. NELSON

Recorder.

United States of America  
Territory of Alaska  
Chitina Precinct.—ss.

I, O. A. NELSON, United States Commissioner and ex-officio Recorder for the Chitina Precinct, Territory of Alaska, hereby certify that the foregoing two typewritten pages is a true, full and exact copy of the therein named DEED AND BILL OF SALE as the same appears in the records of this office.

[Commissioner's Seal]      O. A. NELSON  
United States Commissioner,  
Chitina.

[Endorsed]: Filed Apr. 27, 1934. [17]

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[Title of Court and Cause.]

**DEMURRER.**

Comes now N. P. Nelson, one of the defendants above named, and appearing for himself alone and not for his co-defendants demurs to the complaint of the plaintiffs above named on file herein on the following grounds:

1. That the same does not state facts sufficient to constitute a cause of action.

Dated at Cordova, Alaska, this 14th day of June, 1934.

**DONOHOE & DONOHOE**

Attorneys for Defendant  
N. P. Nelson. [18]

United States of America  
Territory of Alaska.—ss.

THOMAS M. DONOHUE, being first duly sworn,  
upon his oath says:

That he is attorney for the defendant above named; that he served the foregoing demurrer upon L. V. Ray, Esq., the attorney for the plaintiffs therein on the 14th day of June, 1934, by depositing in the United States Post Office at Cordova, Alaska, a full, true and correct copy thereof, by him certified to be such copy, enclosed in an envelope addressed to said L. V. Ray, at Seward, Alaska, that being the residence of the said L. V. Ray, with the postage prepaid thereon, on said date. That there is regular United States mail service between said Cordova and Seward, Alaska.

THOMAS M. DONOHUE

Subscribed and sworn to before me this 14th day of June, 1934.

[Notarial Seal]

C. W. MINAKER

Notary Public for Alaska. My commission expires  
Dec. 1, 1937.

[Endorsed]: Filed Jun. 14, 1934. [19]

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[Title of Court and Cause.]

DEMURRER.

Comes now Charles Hawkins, one of the defendants above named, and appearing for himself alone and out for his co-defendants demurs to the complaint of the plaintiffs above named on file herein on the following grounds:



1. That the same does not state facts sufficient to constitute a cause of action.

Dated at Cordova, Alaska, this 14th day of June, 1934.

DONOHOE & DONOHOE

Attorneys for Defendant

Charles Hawkins. [20]

United States of America  
Territory of Alaska.—ss.

THOMAS M. DONOHOE, being first duly sworn, upon his oath says:

That he is attorney for the defendant above named; that he served the foregoing demurrer upon L. V. Ray, Esq., the attorney for the plaintiffs therein on the 14th day of June, 1934, by depositing in the United States Post Office at Cordova, Alaska, a full, true and correct copy thereof, by him certified to be such copy, enclosed in an envelope addressed to said L. V. Ray, at Seward, Alaska, that being the residence of the said L. V. Ray, with the postage prepaid thereon, on said date. That there is regular United States mail service between said Cordova and Seward, Alaska.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 14th day of June, 1934.

[Notarial Seal] C. W. MINAKER

Notary Public for Alaska. My commission expires  
Dec. 1, 1937.

[Endorsed]: Filed Jun. 14, 1934. [21]

[Title of Court and Cause.]

**DEMURRER.**

Comes now Charles McMahon, one of the defendants above named, and appearing for himself alone and not for his co-defendants demurs to the complaint of the plaintiffs above named on file herein on the following grounds:

1. That the same does not state facts sufficient to constitute a cause of action.

Dated at Cordova, Alaska, this 14th day of June, 1934.

**DONOHOE & DONOHOE**

Attorneys for Defendant

Charles McMahan [22]

United States of America

Territory of Alaska.—ss.

**THOMAS M. DONOHOE**, being first duly sworn, upon his oath says:

That he is attorney for the defendant above named; that he served the foregoing demurrer upon L. V. Ray, Esq., the attorney for the plaintiffs therein on the 14th day of June, 1934, by depositing in the United States Post Office at Cordova, Alaska, a full, true and correct copy thereof, by him certified to be such copy, enclosed in an envelope addressed to said L. V. Ray at Seward, Alaska, that being the residence of the said L. V. Ray, with the postage prepaid thereon, on said date. That there is regular United States mail service between said Cordova and Seward, Alaska.

**THOMAS M. DONOHOE**



Subscribed and sworn to before me this 14th day of June, 1934.

[Notarial Seal] C. W. MINAKER  
Notary Public for Alaska. My commission expires  
Dec. 1, 1937.

[Endorsed]: Filed Jun. 14, 1934. [23]

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[Title of Court and Cause.]

DEMURRER.

Comes now O. A. Nelson, one of the defendants above named both as an individual and as trustee, and appearing for himself alone and not for his co-defendants demurs to the complaint of the plaintiffs above named on file herein on the following grounds:

1. That the same does not state facts sufficient to *constitute* a cause of action.

Dated at Cordova, Alaska, this 14th day of June, 1934.

DONOHOE & DONOHOE

Attorneys for Defendant  
O. A. Nelson. [24]

United States of America  
Territory of Alaska.—ss.

THOMAS M. DONOHOE, being first duly sworn, upon his oath says:

That I am attorney for the defendant above named; that I served the foregoing demurrer upon

L. V. Ray, Esq., the attorney for the plaintiffs therein on the 10th day of July, 1934, by depositing in the United States Post Office at Cordova, Alaska, a full, true and correct copy thereof, by me certified to be such copy, enclosed in an envelope addressed to the said L. V. Ray at Seward, Alaska, that being the residence of the said L. V. Ray, with the postage prepaid thereon, on said date. That there is regular United States mail service between said Cordova and Seward, Alaska.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 10th day of July, 1934.

[Notarial Seal]

CLYDE R. ELLIS

Notary Public for Alaska. My commission expires June 11, 1938.

[Endorsed]: Filed Jul. 11, 1934. [25]

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[Title of Court and Cause.]

### HEARING ON DEMURRER.

Now at this time this cause came regularly on for hearing on defendant O. A. Nelson's demurrer to plaintiffs' complaint, the plaintiffs being represented by L. V. Ray, Esq., and the defendant being represented by Thos. M. Donohoe, Esq.

Whereupon, after argument by respective counsel, the Court took the matter under advisement.

Entered Court Journal No. S-5 Page No. 177  
Dec. 14, 1934. [26]

[Title of Court and Cause.]

OPINION ON DEMURRER.

This matter having come on for hearing upon the demurrer of each of the defendants herein, and the court having taken the matter under advisement, holds that the demurrer should be overruled for the reason that the court is of the opinion that the complaint, while it asks for a cancellation of a certain instrument, is not for the cancellation of the trust therein set forth, but is for the removal of the trustee, the defendant O. A. Nelson; and that the defendants O. A. Nelson, N. P. Nelson, Charles Hawkins, and Charles *McMann*, are beneficiaries of the trust set forth in the complaint, and as such have an interest in the subject matter of the trust and also have an interest in the selection of a new trustee, as prayed for in the complaint.

Dated at Seward, Alaska, this 17th day of December, 1934.

SIMON HELLENTHAL

Judge.

[Endorsed]: Filed Dec. 18, 1934. [27]

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[Title of Court and Cause.]

ORDER OVERRULING DEMURRERS OF ALL  
DEFENDANTS.

The above matter came regularly on for hearing upon the demurrers interposed by each and all the above-named defendants to the complaint of plain-

tiffs, at a special session of the above styled court held at Seward within the Territory and Division aforesaid, on December 14th, 1934; Plaintiffs appearing by their attorney of record, L. V. Ray, Esquire, and the defendants all appearing by their attorney of record, Thomas M. Donohoe, Esquire; argument was had by respective attorneys; whereupon the court did take the matter under advisement and thereafter on December 18th, 1934, did announce in open court its decision upon said demurrer and filed in said cause a memorandum decision in writing thereon, directing that each and all of said demurrers be overruled,

WHEREFORE, IT IS ORDERED that the demurrers of each and all of the defendants in said cause, interposed as against the complaint of plaintiffs, be and the same are hereby over-ruled, with twenty days allowance of time in which defendants shall file and serve answers.

To the above and foregoing order exception is allowed to each of said defendants, as they may be advised.

Done in Open Court this 18th day of December, A. D. 1934.

SIMON HELLENTHAL

District Judge

Entered Court Journal No. S-5 Page No. 180 Dec. 18, 1934.

[Endorsed]: Filed Dec. 18, 1934. [28]

[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANT  
N. P. NELSON.

Comes now defendant N. P. Nelson above named, and answering the complaint of the plaintiffs above named, for himself alone and not for his co-defendants, admits, denies and alleges as follows:

I.

Referring to Paragraph I of plaintiffs said complaint, defendant admits the same.

II.

Referring to Paragraph II of plaintiffs said complaint, defendant admits the same.

III.

Referring to Paragraph III of plaintiffs said complaint, defendant admits that plaintiffs incurred the indebtedness therein mentioned, particularly to the Cash Store of Chitina; admits that on or about the 11th day of April, 1933, plaintiffs did make and execute a deed to O. A. Nelson, but denies each and every other allegation in said paragraph contained.

IV.

Referring to Paragraph IV of plaintiffs said complaint, defendant admits that prior to the 11th day of April, 1933, The First Bank of Cordova commenced an action in the District Court for the Territory of Alaska against the plaintiffs herein for

the foreclosure of the mortgage described; admits that the same was pending at the time of filing of the complaint herein; and alleges that he has no knowledge, information or belief sufficient [29] to enable him to answer any of the other allegations in said paragraph contained, and therefore he denies each and every other allegation in said paragraph contained.

## V.

Defendant, referring to Paragraph V of plaintiffs complaint, alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations therein contained, and therefore denies the same, and the whole thereof.

## VI.

Referring to Paragraph VI of plaintiffs said complaint, defendant alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies the same and the whole thereof.

## VII.

Referring to Paragraph VII of plaintiffs said complaint, defendant admits that O. A. Nelson gave the defendant a lease to a certain portion of the mining claims described in plaintiffs complaint, but alleges that the same was dated April 17, 1933, instead of December 17, 1933; and denies each and every other allegation in said paragraph contained.



VIII.

Referring to Paragraph VIII of plaintiffs said complaint, defendant denies the same and each and every allegation therein contained.

IX.

Referring to Paragraph IX of plaintiffs said complaint, defendant allegess that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

X.

Referring to Paragraph X of plaintiffs said complaint, defendant alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and there- [30] fore he denies each and every allegation, and the whole thereof.

XI.

Referring to Paragraph XI of plaintiffs said complaint, defendant alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

XII.

Referring to Paragraph XII of plaintiffs said complaint, defendant alleges that he has no knowl-



edge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

### XIII.

Referring to Paragraph XIII of plaintiffs complaint, defendant denies the same, and each and every allegation therein contained.

### XIV.

Referring to Paragraph XIV of plaintiffs said complaint, defendant denies each and every allegation therein contained.

### XV.

Referring to Paragraph XV of plaintiffs complaint, defendant admits that defendant O. A. Nelson continues and does exercise supervision and control over the placer mining properties heretofore owned by plaintiffs, and has given to defendant a lease upon a portion of the same; denies that such supervision and control is without right, and denies each and every other allegation in said paragraph contained.

And by way of affirmative defense and counterclaim, defendant alleges as follows:

### I.

That on or about the 11th day of April, 1933, plaintiffs W. E. James and Agnes James, for a valuable consideration, made, executed and delivered to O. A. Nelson a certain deed and bill of

sale covering the following described real and personal property: [31]

Placer Mining Claims: Discovery on Bonanza Creek, No. 1 Above Discovery on Bonanza Creek, No. 5 Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, Discovery on Gold Run Creek, Discovery Annex on Gold Run Creek, No. 1 Cathenda Creek, No. 1 Little Eldorado Creek, No. 3 Little Eldorado Creek, Discovery Bench on Little Eldorado Creek, No. 1 Discovery Bench on Little Eldorado Creek, No. 2 Discovery Bench on Little Eldorado Creek, No. 3 Discovery Bench on Little Eldorado Creek, No. 1 Fraction on Little Eldorado Creek, No. 1 Gold Bug Bench on Little Eldorado Creek, No. 2 Gold Bug Bench on Little Eldorado Creek, No. 3 Gold Bug Bench on Little Eldorado Creek, and James Bench on Little Eldorado Creek; all situated on Gold Run and Bonanza Creeks and tributaries, in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and also together with a sawmill and cabin located near the Post Office in the town of Chisana, Alaska, and one large cabin located in the town of Chisana, Alaska,

and known as the James Cabin; and also together with all houses, buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith, together with the dips, angles, spurs, ores, minerals, tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

## II.

That thereafter plaintiffs W. E. James and Agnes James acknowledged and told and informed the defendant that they had so made, executed and delivered such deed to defendant O. A. Nelson.

## III.

That thereafter and on the 17th day of April, 1933, defendant O. A. Nelson made, executed and delivered to defendant a lease or lay covering the following described mining claims:

No. 5 Above Discovery on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 1 and No. 1 Fraction on Little El Dorado Creek, Nos. 1, 2 and 3 Discovery Bench on Little El Dorado Creek, all being placer mining claims located on Bonanza Creek and tributaries in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska, and being a portion of the

ground theretofore owned by the plaintiffs herein;

the said lease or lay to remain in full force and effect to and until the first day of October, 1942.

#### IV.

That defendant thereupon entered into the possession of said min- [32] ing claims with the full knowledge and consent of the plaintiffs herein, and every since said date has been, and now is, in the lawful and peaceful possession thereof.

#### V.

That said lease ever since said 17th day of April, 1933, has been, and now is, in full force and effect, and was entered into with the full knowledge of the plaintiffs herein.

#### VI.

That the sum of One Hundred Dollars (\$100.00) is a reasonable sum to be allowed defendant for attorneys fees in defending this action.

WHEREFORE, having fully answered plaintiffs complaint, defendant prays that plaintiffs take nothing by reason thereof, but that he recover his costs and disbursements in this action incurred, and a reasonable attorneys fee in the sum of One Hundred Dollars (\$100.00); that the lease made, executed and delivered to defendant by O. A. Nelson on the 17th day of April, 1933, covering the above described property be declared to be in full force

and effect, and that plaintiffs, and each of them, be restrained from in any manner interfering therewith; and for such other and further relief as to the Court may seem just and equitable.

DONOHOE & DONOHOE,  
Attorneys for Defendant N. P. Nelson.

United States of America,  
Territory of Alaska—ss.

THOMAS M. DONOHOE, being first duly sworn upon his oath, says:

I am an attorney for the defendant above named, and make this affidavit of verification in his behalf for the reason that defendant is not now at Cordova, Alaska, the place where this verification is made, nor within one hundred miles thereof; that I have read said Answer, know the contents thereof, and believe the same to be true.

THOMAS M. DONOHOE.

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal]                      C. W. MINAKER,  
Notary Public for Alaska. My Commission expires  
December 1, 1937. [33]

[Endorsed]: Filed Jan. 7, 1935. [34]

[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Territory of Alaska—ss.

THOMAS M. DONOHOE, being first duly sworn upon his oath, says:

That he is attorney for the defendant N. P. Nelson in the above entitled action; that he served the foregoing Answer upon L. V. Ray, Esq., attorney for plaintiffs, at Cordova, Alaska, on the 7th day of January, 1935, by depositing a true copy thereof, certified to be such true copy by affiant, in the United States post office at Cordova, Alaska, enclosed in an envelope with the postage prepaid and addressed to the said L. V. Ray at Seward, Alaska, that being his address.

That the said L. V. Ray is a resident of the town of Seward, Alaska and that there is regular United States mail service between the town of Cordova, Alaska, and the town of Seward, Alaska.

THOMAS M. DONOHOE,

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal] C. W. MINAKER,  
Notary Public for Alaska. My Commission expires  
December 1, 1937.

[Endorsed]: Filed Jan. 7, 1935. [35]



[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANT  
CHARLES HAWKINS

Comes now defendant Charles Hawkins above named, and answering the complaint of the plaintiffs above named, for himself alone and not for his co-defendants, admits, denies and alleges as follows:

I.

Referring to Paragraph I of plaintiffs said complaint, defendant admits the same.

II.

Referring to Paragraph II of plaintiffs said complaint, defendant admits the same.

III.

Referring to Paragraph III of plaintiffs said complaint, defendant admits that plaintiffs incurred the indebtedness therein *mention*, particularly to the Cash Store of Chitina; admits that on or about the 11th day of April, 1933, plaintiffs did make and execute a deed to O. A. Nelson, but denies each and every other allegation in said paragraph contained.

IV.

Referring to Paragraph IV of plaintiffs said complaint, defendant admits that prior to the 11th day of April, 1933, The First Bank of Cordova commenced an action in the District Court for the Territory of Alaska against the plaintiffs herein for the foreclosure of the mortgage described; admits that



the same was pending at the time of filing of the complaint herein; and alleges that he has no knowledge, information or belief sufficient to enable [36] him to answer any of the other allegations in said paragraph contained, and therefore he denies each and every other allegation in said paragraph contained.

#### V.

Defendant, referring to Paragraph V of plaintiffs complaint, alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations therein contained, and therefore denies the same, and the whole thereof.

#### VI.

Referring to Paragraph VI of plaintiffs said complaint, defendant alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies the same and the whole thereof.

#### VII.

Referring to Paragraph VII of plaintiffs said complaint, defendant alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

#### VIII.

Referring to Paragraph VIII of plaintiffs said complaint, defendant alleges that he has no

knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

### IX.

Referring to Paragraph IX of plaintiffs said complaint, defendant admits that O. A. Nelson gave defendant a lease to a certain portion of the mining claims described in plaintiffs complaint, but alleges that the same was dated June 3, 1933, instead of December 17, 1933, and further alleges that under date of February 19, 1934, O. A. Nelson, defendant herein, made, executed and delivered to defendant an additional lease covering another portion of the property described in said complaint; and denies each and every other allegation in said paragraph contained. [37]

### X.

Referring to Paragraph X of plaintiffs said complaint, defendant denies the same, and each and every allegation therein contained.

### XI.

Referring to Paragraph XI of plaintiffs said complaint, defendant alleges that he has no knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

### XII.

Referring to Paragraph XII of plaintiffs said complaint, defendant alleges that he has no

knowledge, information or belief sufficient to enable him to answer any of the allegations in said paragraph contained, and therefore he denies each and every allegation, and the whole thereof.

### XIII.

Referring to Paragraph XIII of plaintiffs complaint, defendant denies the same, and each and every allegation therein contained.

### XIV.

Referring to Paragraph XIV of plaintiffs said complaint, defendant denies each and every allegation therein contained.

### XV.

Referring to Paragraph XV of plaintiffs complaint, defendant admits that defendant O. A. Nelson continues and does exercise supervision and control over the placer mining properties heretofore owned by plaintiffs, and has given to defendant a lease upon a portion of the same; denies that such supervision and control is without right, and denies each and every other allegation in said paragraph contained.

And by way of affirmative defense and counterclaim, defendant alleges as follows:

### I.

That on or about the 11th day of April, 1933, plaintiffs W. E. James and Agnes James, for a valuable consideration, made, executed and delivered to O. A. Nelson a certain deed and bill of

sale covering the fol- [38] lowing described real and personal property:

Placer Mining Claims: Discovery on Bonanza Creek, No. 1 Above Discovery on Bonanza Creek, No. 5 Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, Discovery on Gold Run Creek, Discovery Annex on Gold Run Creek, No. 1 Cathenda Creek, No. 1 Little Eldorado Creek, No. 3 Little Eldorado Creek, Discovery Bench on Little Eldorado Creek, No. 1 Discovery Bench on Little Eldorado Creek, No. 2 Discovery Bench on Little Eldorado Creek, No. 3 Discovery Bench on Little Eldorado Creek, No. 1 Fraction on Little Eldorado Creek, No. 1 Gold Bug Bench on Little Eldorado Creek, No. 2 Gold Bug Bench on Little Eldorado Creek, No. 3 Gold Bug Bench on Little Eldorado Creek, and James Bench on Little Eldorado Creek; all situated on Gold Run and Bonanza Creeks and tributaries; in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and also together with a sawmill and cabin located near the Post Office in the town of Chisana, Alaska, and one large cabin located in the town of Chisana, Alaska, and known as the James Cabin; and also together with all houses,

buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith, together with the dips, angles, spurs, ores, minerals, tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

## II.

That thereafter plaintiffs W. E. James and Agnes James acknowledged and told and informed the defendant that they had so made, executed and delivered such deed to defendant O. A. Nelson.

## III.

That thereafter and on the 3rd day of June, 1933, defendant O. A. Nelson made, executed and delivered to defendant a lease or lay covering the following described mining claims:

Discovery on Bonanza Creek, No. 1 Above  
Discovery on Bonanza Creek and No. 1  
*Chatenda* Creek, being placer mining claims located on Bonanza Creek and tributaries in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska, and being a portion of the ground theretofore owned by the plaintiffs herein;

the said lease or lay to remain in full force and effect to and until the first day of October, 1937. That thereafter and on the 19th day of February, 1934, defendant O. A. Nelson made, executed and de-

livered to defendant a lease or lay covering the following described mining claims: [39]

Discovery Fraction on Bonanza Creek, being a placer mining claim located on Bonanza Creek and tributaries in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska;

and being a portion of the ground theretofore owned by the plaintiffs herein; the said lease or lay to remain in full force and effect to and until the first day of October, 1937.

#### IV.

That defendant thereupon entered into the possession of said mining claims with the full knowledge and consent of the plaintiffs herein, and every since said date has been, and now is, in the lawful and peaceful possession thereof.

#### V.

That since said 3rd day of June, 1933 and the 19th day of February, 1934 said leases have been, and now are, in full force and effect, and were entered into with the full knowledge and consent of the plaintiffs herein.

#### VI.

That the sum of One Hundred Dollars (\$100.00) is a reasonable sum to be allowed defendant for attorneys fees in defending this action.

WHEREFORE, having fully answered plaintiffs complaint, defendant prays that plaintiffs take nothing by reason thereof, but that he recover his costs and disbursements in this action incurred, and



a reasonable attorneys fee in the sum of One Hundred Dollars (\$100.00); that the leases made, executed and delivered to defendant by O. A. Nelson on the 3rd day of June, 1933 and the 19th day of February, 1934, covering the above described property, be declared to be in full force and effect, and that plaintiffs, and each of them, be restrained from in any manner interfering therewith; and for such other and further relief as to the Court may seem just and equitable.

DONOHOE & DONOHOE

Attorneys for Defendant

Charles Hawkins.

United States of America,  
Territory of Alaska.—ss.

THOMAS M. DONOHOE, being first duly sworn upon his oath, says: [40]

I am an attorney for the defendant above named, and make this affidavit of verification in his behalf for the reason that defendant is not now at Cordova, Alaska, the place where this verification is made, nor within one hundred miles thereof; that I have read said Answer, know the contents thereof, and believe the same to be true.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal] C. W. MINAKER

Notary Public for Alaska. My Commission expires  
December 1, 1937.

[Endorsed]: Filed Jan 7 1935. [41]



[Title of Court and Cause.]

AFFIDAVIT

United States of America,  
Territory of Alaska.—ss.

THOMAS M. DONOHOE, being first duly sworn upon his oath, says:

That he is attorney for the defendant Charles Hawkins in the above entitled action; that he served the foregoing Answer upon L. V. Ray, Esq., attorney for plaintiffs, at Cordova, Alaska, on the 7th day of January, 1935, by depositing a true copy thereof, certified to be such true copy by affiant, in the United States post office at Cordova, Alaska, enclosed in an envelope with the postage prepaid and addressed to the said L. V. Ray at Seward, Alaska, that being his address.

That the said L. V. Ray is a resident of the town of Seward, Alaska and that there is regular United States mail service between the town of Cordova, Alaska, and the town of Seward, Alaska.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal] C. W. MINAKER  
Notary Public for Alaska. My Commission expires  
December 1, 1937.

[Endorsed]: Filed Jan 7 1935. [42]

[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANT  
O. A. NELSON

Comes now defendant O. A. Nelson, above named, and answering the complaint of the plaintiffs above named for himself alone and not for his co-defendants, admits, denies and alleges as follows:

I.

Referring to Paragraph I of plaintiffs said complaint, defendant admits the same.

II.

Referring to Paragraph II of plaintiffs said complaint, defendant admits the same.

III.

Referring to Paragraph III of plaintiffs said complaint, defendant admits that plaintiffs, in the conduct of their mining operations upon the property described, incurred certain financial obligations, particularly to the Cash Store of Chitina, managed and conducted by defendant, and admits that on or about the 11th day of April, 1933, plaintiffs did make, execute and deliver a deed to defendant, conveying all the right, title and interest of plaintiffs in and to said described mining property to defendant individually, and denies that the same was executed to him as trustee, and defendant denies each and every other allegation in said paragraph contained.

## IV.

Referring to Paragraph IV of plaintiffs said complaint, defendant admits that prior to the 11th day of April, 1933, an action was instituted [43] in the District Court for the Territory of Alaska by The First Bank of Cordova against the plaintiffs herein, and admits that said action was pending at the time of the filing of the complaint herein; admits that on or about the 11th day of April, 1933, he promised that said action would be dismissed; denies that he was acting as trustee; and denies each and every other allegation in said paragraph contained, save as hereinafter admitted and/or alleged.

## V.

Referring to Paragraph V of plaintiffs said complaint, defendant denies the same, and each and every allegation therein contained.

## VI.

Referring to Paragraph VI of plaintiffs complaint, defendant denies the same and each and every allegation therein contained.

## VII.

Referring to Paragraph VII of plaintiffs said complaint, defendant admits that he made, executed and delivered to defendant N. P. Nelson a lease upon a portion of the mining claims mentioned and described in said complaint, but alleges that the date of said lease was the 17th day of April, 1933, and not the 17th day of December, 1933; and

denies each and every other allegation in said paragraph contained.

### VIII.

Referring to Paragraph VIII of plaintiffs said complaint, defendant denies the same, and each and every allegation in said paragraph contained.

### IX.

Referring to Paragraph IX of plaintiffs said complaint, defendant admits that he made, executed and delivered to defendant Charles Hawkins a lease to a portion of the mining claims described in said complaint, but alleges that said lease was dated June 3, 1933, and not December 17, 1933; and denies each and every other allegation in said paragraph contained.

### X.

Referring to Paragraph X of plaintiffs complaint defendant denies the same, and each and every allegation therein contained.

### XI.

Referring to Paragraph XI of plaintiffs said complaint, defendant [44] admits that he made, executed and delivered to Charles McMahan a lease to a portion of the mining claims in said complaint described, and denies each and every other allegation in said paragraph contained.

### XII.

Referring to Paragraph XII of plaintiffs said complaint, defendant denies the same, and each and every allegation therein contained.

## XIII.

Referring to Paragraph XIII of plaintiffs said complaint, defendant denies the same, and each and every allegation therein contained.

## XIV.

Referring to Paragraph XIV of plaintiffs said complaint, defendant denies the same, and each and every allegation therein contained, save and except as may hereafter be admitted or alleged.

## XV.

Referring to Paragraph XV of plaintiffs said complaint, defendant admits that he continues and does exercise supervision and control over the placer mining property mentioned and described in said complaint; denies that he does so without right; admits that he has issued leases for portions of said property; and denies each and every other allegation in said paragraph contained.

And for a separate and further answer, and by way of cross-complaint, defendant alleges:

## I.

That on and prior to the 4th day of February, 1930, plaintiff W. E. James was the owner, subject to the paramount title of the United States of America, of certain placer mining claims situated on Bonanza Creek and other creeks tributary and adjacent thereto, all located in the White River mining District of the Chitina Recording Precinct, then Chisana Recording District, Territory of

Alaska, mentioned and described in the deed attached hereto, marked Exhibit A, and by reference incorporated in and made a part hereof.

## II.

That on or about the 5th day of February, 1930, plaintiffs, in con- [45] sideration of the sum of \$5,150.00, did made, execute and deliver to The First Bank of Cordova, a banking corporation of Cordova, Alaska, a mortgage covering the property mentioned and described in plaintiffs exhibit "A", by reference incorporated in and made part hereof; that said mortgage was recorded in the Chitina Recording Precinct at Chitina, Third Division, Territory of Alaska, on or about the 30th day of September, 1932.

## III.

That plaintiffs in the conduct of their mining operations became greatly indebted to the Chitina Cash Store, of which defendant is a part owner.

## IV.

That prior to the 11th day of April, 1933, an action was instituted in the District Court for the Territory of Alaska, Third Division, by The First Bank of Cordova as plaintiff against the plaintiffs in this action, W. E. James and Agnes James, for the purpose of securing a judgment of foreclosure and sale of the mining properties described in and covered by said mortgage.



## V.

That subsequent to the commencement of the action above mentioned by The First Bank of Cordova against plaintiffs, defendant and The First Bank of Cordova proposed to plaintiffs that if they would convey said property to defendant, he would hold the same as trustee to and until the indebtedness mentioned was paid in full, and would then return said property to plaintiffs; that they further proposed to plaintiffs that during the time defendant held said property as trustee he should have full power and authority to make and give any valid leases or lays upon any part or portion of the property that he might desire, and for a period of time not to exceed ten years.

## VI.

That on or about the 11th day of April, 1933, defendant went to Chisana, Alaska, the place where plaintiffs were then living, and discussed with plaintiffs the proposed trust agreement above mentioned. That plaintiffs then and at that time offered to defendant, as a substitute therefor and in lieu of any such trust agreement, and in consideration of their complete and final release and satisfaction from all indebtedness due to The First Bank of [46] Cordova and the Chitina Cash Store only, and in addition to plaintiffs receiving a lease to a plot of ground to be selected by plaintiff W. E. James, one hundred by one hundred feet on Bonanza Creek at the mouth of Little Eldorado Creek, to last for the mining season of 1933, to make, execute and



deliver to defendant a full and complete and outright deed to the mining properties theretofore owned by plaintiffs. That defendant accepted said offer, and on or about the 11th day of April, 1933, plaintiffs W. E. James and Agnes James made, executed and delivered to defendant a deed, a true copy of which is hereto attached, marked Exhibit "A", and is by reference incorporated in and made a part hereof. That although the word "trustee" is used after the name of defendant in said deed, it was intended to be and specifically agreed by and between plaintiffs and defendant that such deed was an outright conveyance, and not in any manner or sense to create a trust.

## VII.

That thereafter and under date of April 16, 1933, defendant W. E. James in writing confirmed the deed so made, executed and delivered as above mentioned as an outright deed, and not as in any manner creating a trust. That on or about the 20th day of April, 1933, defendant made, executed and delivered to plaintiff W. E. James a lease to a plot of ground one hundred by one hundred feet on claim No. 6 Above Discovery on Bonanza Creek at the mouth of Little Eldorado Creek; that subsequently defendant, acting by and through N. P. Nelson at Chisana, Alaska, offered and tendered to plaintiffs a satisfaction of the mortgage held by The First Bank of Cordova, cancelled notes previously held by said Bank, and receipt in full from the Chitina Cash Store, but that plaintiffs refused to

accept the same; that defendant had paid the principal amounts, together with accrued interest of said notes and mortgage to The First Bank of Cordova by paying said Bank cash in full for the same.

### VIII.

That upon the making, execution and delivery of the deed above mentioned, plaintiffs quit and surrendered the possession of the property [47] therein described to defendant, and that plaintiff procured and turned over and delivered to defendant certain of the personal property covered by said deed and bill of sale which he had in his possession, all freely and voluntarily, and without coercion; that ever since said date defendant has been, and now is, in the peaceful possession thereof.

### IX.

That on the 17th day of April, 1933, defendant made, executed and delivered to defendant N. P. Nelson, a lease to last to and until October 1, 1942, covering the following described property:

No. 5 Above Discovery on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 1 and No. 1 Fraction on Little Eldorado Creek, Nos. 1, 2 and 3 Discovery Bench on Little Eldorado Creek, all being placer mining claims located on Bonanza Creek and tributaries in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska, and being a por-

tion of the ground theretofore owned by the plaintiffs herein.

That on June 3, 1933, defendant made, executed and delivered to defendant Charles Hawkins a lease to last to and until October 1, 1937, to the following described property:

No. 1 on *Chatenda* Creek, Discovery and No. 1 Above Discovery on Bonanza Creek, in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska.

That also on February 19, 1934, defendant made, executed and delivered to defendant Charles Hawkins, a lease to last to and until *Ocotber* 1, 1937, covering:

Discovery Fraction on Bonanza Creek in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska.

That each of said defendants, after the execution of the leases above described, entered into the possession of the property mentioned, and ever since said dates have been, and now are, in the peaceful possession of the property mentioned; that at the dates of the leases mentioned, namely, to defendant N. P. Nelson on April 17, 1933, and to defendant Charles Hawkins on June 3, 1933, said defendants N. P. Nelson and Charles Hawkins entered into possession of the ground covered thereby with the full knowledge and with [48] the consent of the plaintiffs herein.

## X.

That in addition to the leases mentioned, defendant made, executed and delivered to defendant Charles McMahan a lease to a certain portion of the ground mentioned and described in said deed, but that the said Charles McMahan had surrendered the same, and no longer has any interest therein.

## XI.

That immediately after the execution of said deed on the 11th day of April, 1933, The First Bank of Cordova instructed Messrs. Donohoe & Dimond to dismiss the action then pending in the District Court for the Territory of Alaska against the plaintiffs herein for foreclosure of the mortgage hereinbefore described; that said suit or action, same being Cause No. C-594 in said Court, has since been so dismissed by The First Bank of Cordova.

## XII.

That defendant, by virtue of said deed, became the owner of the property therein described on the 11th day of April, 1933, subject to the paramount title of the United States of America to the mining claims therein mentioned and described, and entered into the possession thereof with the full knowledge and consent of the plaintiffs herein; and ever since said date has been, and now is, in the lawful possession thereof.

## XIII.

That the sum of Five Hundred Dollars is a rea-

sonable sum to be allowed defendant as attorney fees in defending this action.

WHEREFORE, having fully answered plaintiffs complaint, defendant prays this Honorable Court for a judgment dismissing the same; for his costs and disbursements in this action incurred; for a reasonable attorney fee in the sum of Five Hundred Dollars (\$500.00); that defendant be adjudged and decreed to be the sole and lawful owner of the property described in the foregoing complaint filed herein; and that defendant's title thereto be quieted as against any title, interest or claim therein or thereto by said plaintiffs, or either of them; and that defendant have such other and further relief as to the Court may seem just [49] and equitable.

DONOHOE & DONOHOE

Attorneys for Defendant

O. A. Nelson.

United States of America,  
Territory of Alaska.—ss.

THOMAS M. DONOHOE, being first duly sworn upon his oath, says:

I am an attorney for the defendant above named, and make this affidavit of verification in his behalf for the reason that defendant is not now at Cordova, Alaska, the place where this verification is made, nor within one hundred miles thereof; that I have read said Answer, know the contents thereof, and believe the same to be true.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal] C. W. MINAKER

Notary Public for Alaska. My Commission expires December 1, 1937. [50]

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EXHIBIT "A".

DEED AND BILL OF SALE

THIS INDENTURE, Made this 11th day of April, 1933, between W. E. James and Agnes James, husband and wife, of Chisana, Alaska, the parties of the first part, and O. A. Nelson, Trustee, of Chitina, Alaska, the party of the second part, WITNESSETH:

The said parties of the first part, for and in consideration of the sum of One (\$1.00) and other good and valuable consideration by them received do by these presents, Grant, Bargain, Sell, Convey and Confirm unto the said party of the second part, and to his heirs and assigns, the following Described Property:

Placer Mining Claims: Discovery on Bonanza Creek, No. 1 Above Discovery on Bonanza Creek, No. 5 Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, Discovery on Gold Run Creek,



Discovery Annex on Gold Run Creek, No. 1 Cathenda Creek, No. 1 Little Eldorado Creek, No. 3 Little Eldorado Creek, Discovery Bench on Little Eldorado Creek, No. 1 Discovery Bench on Little Eldorado Creek, No. 2 Discovery Bench on Little Eldorado Creek, No. 3 Discovery Bench on Little Eldorado Creek, No. 1 Fraction on Little Eldorado Creek, No. 1 Gold Bug Bench on Little Eldorado Creek, No. 2 Gold Bug Bench on Little Eldorado Creek, No. 3 Gold Bug Bench on Little Eldorado Creek, and James Bench on Little Eldorado Creek; all situated on Gold Run and Bonanza Creeks and tributaries, in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and also together with a saw-mill and cabin located near the Post Office in the town of Chisana, Alaska, and one large cabin located in the town of Chisana and known as the James Cabin; and also together with all houses, buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith, to have and to hold the same, together with the dips, angles, spurs, ores, minerals, tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever. [51]

The said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, execu-

tors and administrators, all and singular, the premises hereinabove conveyed, described and granted, or mentioned, with the appurtenances, unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will Warrant and forever Defend.

IN WITNESS WHEREOF, the said Parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal]

W. E. JAMES

[Seal]

AGNES JAMES

Signed, sealed and delivered in the presence of  
LUELLA JOHNSTON  
C. H. GILLAM

Filed for record by O. A. Nelson at 10 A M on  
April 15th, 1933.

O. A. NELSON

Recorder

United States of America  
Territory of Alaska  
Chitina Precinct—ss.

I, O. A. Nelson, United States Commissioner and ex-officio Recorder for the Chitina Precinct, Territory of Alaska, hereby certify that the foregoing two typewritten pages is a true, full and exact copy of the therein named DEED AND BILL OF SALE as the same appears in the records of this office.

(Signed) O. A. NELSON

United States Commissioner,  
Chitina

[Endorsed]: Filed Jan 7 1935. [52]

[Title of Court and Cause.]

AFFIDAVIT

United States of America,  
Territory of Alaska—ss.

THOMAS M. DONOHOE, being first duly sworn  
upon his oath, says:

That he is attorney for the defendant O. A. Nelson in the above entitled action; that he served the foregoing Answer upon L. V. Ray, Esq., attorney for plaintiffs, at Cordova, Alaska, on the 7th day of January, 1935, by depositing a true copy thereof, certified to be such true copy by affiant, in the United States post office at Cordova, Alaska, enclosed in an envelope with the postage prepaid and addressed to the said L. V. Ray at Seward, Alaska, that being his address.

That the said L. V. Ray is a resident of the town of Seward, Alaska and that there is regular United States mail service between the town of Cordova, Alaska, and the town of Seward, Alaska.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 7th day  
of January, 1935.

[Notarial Seal] C. W. MINAKER  
Notary Public for Alaska. My Commission expires  
December 1, 1937.

[Endorsed]: Filed Jan 7 1935. [53]

[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANT  
CHARLES McMAHAN

Comes now defendant Charles McMahan above named, and answering the complaint of the plaintiffs above named, for himself alone and not for his co-defendants, admits, denies and alleges as follows:

I.

Answering Paragraphs I and II of plaintiffs said complaint, defendant admits the same.

II.

Referring to Paragraphs III, IV, V, VI, VII, VIII, IX, X, XIII, XIV and XV, defendant denies the same, and each and every allegation therein contained, except as may hereafter be admitted and/or alleged.

III.

Referring to Paragraph XI of plaintiffs said complaint, defendant admits that defendant O. A. Nelson made, executed and delivered to defendant a lease to a certain portion of the mining claims in said complaint described, and denies each and every other allegation therein contained.

IV.

Referring to Paragraph XII of plaintiffs said complaint, defendant denies the same, and each and every allegation therein contained.

And by way of affirmative defense, defendant alleges that on or about the 11th day of April, 1933,

plaintiffs W. E. James and Agnes James, made, executed and delivered to O. A. Nelson, a deed and bill of sale covering the property therein described and situated at Chisana, Chitina Recording Precinct, Territory of Alaska. [54]

## II.

That thereafter defendant O. A. Nelson made, executed and delivered to defendant a lease covering a portion of the mining claims mentioned and described in said deed, and that defendant, with the full knowledge and consent of plaintiffs, entered into the possession thereof; that plaintiffs informed defendant that they had so deeded said property to the said defendant O. A. Nelson, and confirmed and made no objection to defendant's taking possession thereof.

## III.

That on or about the 1st day of July, 1934, defendant surrendered said lease and the property covered thereby to defendant O. A. Nelson, which surrender was accepted by the said O. A. Nelson, and defendant no longer has any interest therein, or any part thereof.

WHEREFORE, having fully answered plaintiffs complaint, defendant prays that the same may be dismissed, and that he recover his costs and disbursements in this action incurred, and for such further and other relief as to the Court may seem just and equitable.

DONOHUE & DONOHUE

Attorneys for Defendant

Charles McMahan.

United States of America,  
Territory of Alaska.—ss.

THOMAS M. DONOHUE, being first duly sworn upon his oath, says:

I am an attorney for the defendant above named, and make this affidavit of verification in his behalf for the reason that defendant is not now at Cordova, Alaska, the place where this verification is made, nor within one hundred miles thereof; that I have read said Answer, know the contents thereof, and believe the same to be true.

THOMAS M. DONOHUE

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal] C. W. MINAKER  
Notary Public for Alaska. My Commission expires  
December 1, 1937.

[Endorsed]: Filed Jan 7 1935. [55]

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[Title of Court and Cause.]

AFFIDAVIT

United States of America,  
Territory of Alaska—ss.

THOMAS M. DONOHUE, being first duly sworn upon his oath, says:

That he is attorney for the defendant Charles McMahan in the above entitled action; that he served the foregoing Answer upon L. V. Ray, Esq.,



attorney for plaintiffs, at Cordova, Alaska, on the 7th day of January, 1935, by depositing a true copy thereof, certified to be such true copy by affiant, in the United States post office at Cordova, Alaska, enclosed in an envelope with the postage prepaid and addressed to the said L. V. Ray at Seward, Alaska, that being his address.

That the said L. V. Ray is a resident of the town of Seward, Alaska and that there is regular United States mail service between the town of Cordova, Alaska, and the town of Seward, Alaska.

THOMAS M. DONOHOE

Subscribed and sworn to before me this 7th day of January, 1935.

[Notarial Seal] C. W. MINAKER

Notary Public for Alaska. My Commission expires  
December 1, 1937.

[Endorsed]: Filed Jan 7 1935. [56]

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[Title of Court and Cause.]

REPLY TO ANSWER OF O. A. NELSON,  
DEFENDANT.

COME now the Plaintiffs, by and through their attorneys of record, L. V. RAY and LADY WILLIE FORBUS, and replying to the Answer and Affirmative Defense of the above named Defendant, admit, deny and allege the following:

FIRST: Replying to Paragraphs I, II, III and IV of said Defendant's Affirmative Defense, Plaintiffs admit the same.

SECOND: Replying to Paragraphs V, VI, VIII, XII and XIII of said Defendant's Affirmative Defense, Plaintiffs deny same.

THIRD: Replying to Paragraphs X and Xi of said Defendant's Affirmative Defense, Plaintiffs have no knowledge upon which to base a belief, and, therefore, deny the same.

FOURTH: Replying to Paragraph VII of said Defendant's Affirmative Defense, Plaintiffs admit the execution of the lease to Plaintiffs therein mentioned, admit said Defendant tendered certain papers purporting to be as described in said paragraph and that Plaintiffs refused to accept the same; and Plaintiffs deny each and every other allegation therein contained.

FIFTH: Replying to Paragraph IX of said Defendant's Affirmative Defense, Plaintiffs have no knowledge upon which to base a belief as to the first six paragraphs therein, and, therefore, deny the same. Plaintiffs admit that the Defendants entered into possession of the property described in the seventh paragraph therein, and deny each and every allegation otherwise contained therein.

WHEREFORE, Plaintiffs pray that the Affirmative Defense and Cross-Complaint of said Defendant be dismissed, and that they be granted judgment [57] as prayed for in their original complaint.

L. V. RAY

LADY WILLIE FORBUS

Attorneys for Plaintiffs.

Cordova, Alaska.

United States of America  
Territory of Alaska—ss.

W. E. JAMES, being first duly sworn, upon oath  
deposes and says:

That he is one of the Plaintiffs in the above en-  
titled action; that he has read the foregoing Reply,  
knows the contents thereof, and believes the same to  
be true.

W. E. JAMES

Subscribed and sworn to before me on this 8th  
day of February, 1935.

L. V. RAY

Notary Public, in and for the Territory of Alaska.

My commission expires March 24, 1938.

[Endorsed]: Filed Feb 13 1935. [58]

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[Title of Court and Cause.]

REPLY TO ANSWER OF N. P. NELSON,  
DEFENDANT.

COME now the Plaintiffs, by and through their  
attorneys of record, L. V. RAY and LADY  
WILLIE FORBUS, and replying to the Answer  
and Affirmative Defense of the above named De-  
fendant, admit deny and allege the following:

FIRST: Replying to Paragraphs I, II, IV, V  
and VI of said Defendant's Affirmative Defense,  
Plaintiffs deny the same.

SECOND: Replying to Paragraph III of said Defendant's Affirmative Defense, Plaintiffs have no knowledge upon which to base a belief, and, therefore, deny the same.

WHEREFORE, Plaintiffs pray that the Affirmative Defense and Cross-Complaint of said Defendant be dismissed, and that they be granted judgment as prayed for in their original complaint.

L. V. RAY

LADY WILLIE FORBUS

Attorneys for Plaintiffs.

Cordova, Alaska.

United States of America

Territory of Alaska.—ss.

W. E. JAMES, being first duly sworn, upon oath deposes and says:

That he is one of the Plaintiffs in the above entitled action; that he has read the foregoing Reply, knows the contents thereof, and believes the same to be true.

W. E. JAMES

Subscribed and sworn to before me on this 8th day of February, 1935.

L. V. RAY

Notary Public, in and for the Territory of Alaska.

My Commission Expires Mch. 28, 1928.

[Endorsed]: Filed Feb 13 1935. [59]

[Title of Court and Cause.]

REPLY TO ANSWER OF CHARLES  
HAWKINS, DEFENDANT.

COME now the Plaintiffs, by and through their attorneys of record, L. V. RAY and LADY WILLIE FORBUS, and replying to the Answer and Affirmative Defense of the above named Defendant, admit, deny and allege the following:

FIRST: Replying to Paragraphs I, II, IV, V and VI of said Defendant's Affirmative Defense, Plaintiffs deny the same.

SECOND: Replying to Paragraph III of said Defendant's Affirmative Defense, Plaintiffs have no information upon which to base a belief, and, therefore, deny the same.

WHEREFORE, Plaintiffs pray that the Affirmative Defense and Cross-Complaint of said Defendant be dismissed, and that they be granted judgment as prayed for in their original complaint.

L. V. RAY

LADY WILLIE FORBUS

Attorneys for Plaintiffs.

Cordova, Alaska.

United States of America  
Territory of Alaska—ss.

W. E. JAMES, being first duly sworn, on oath deposes and says: That he is one of the Plaintiffs in the above entitled action; that he has read the foregoing Reply, knows the contents thereof, and believes the same to be true.

W. E. JAMES

Subscribed and sworn to before me this 8th day of February, 1935.

L. V. RAY

Notary Public, Territory of Alaska. My Commission Expires Mch 28, 1938.

[Endorsed]: Filed Feb 13 1935. [60]

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[Title of Court and Cause.]

REPLY TO ANSWER OF CHARLES  
McMAHAN, DEFENDANT.

COME now the Plaintiffs, by and through their attorneys of record, L. V. RAY and LADY WILLIE FORBUS, and replying to the Answer and Affirmative Defense of the above named Defendant, admit, deny and allege the following:

FIRST: Replying to Paragraph I of said Defendant's Affirmative Defense, Plaintiffs deny the same.

SECOND: Replying to Paragraphs II and III of said Defendant's Affirmative Defense, Plaintiffs have no knowledge upon which to base a belief as to certain portions of said Paragraphs and, therefore, deny each and every allegation contained in the same.

WHEREFORE, Plaintiffs pray that the Affirmative Defense and Cross-Complaint of said Defendant be dismissed, and that they be granted judgment as prayed for in their original complaint.

L. V. RAY

LADY WILLIE FORBUS

Attorneys for Plaintiffs.  
Cordova, Alaska.



United States of America  
Territory of Alaska.—ss.

W. E. JAMES, being first duly sworn, upon oath  
deposes and says:

That he is one of the Plaintiffs in the above entitled action; that he has read the foregoing Reply, knows the contents thereof, and believes the same to be true.

W. E. JAMES

Subscribed and sworn to before me on this 8th  
day of February, 1935.

L. V. RAY

Notary Public, in and for the Territory of Alaska.

My Commission Expires Mch. 24, 1938.

[Endorsed]: Filed Feb 13 1935. [61]

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[Title of Court and Cause.]

MOTION TO AMEND COMPLAINT BY  
INTERLINEATION.

COME now the Plaintiffs, through their attorneys of record, L. V. RAY and LADY WILLIE FORBUS, and move the Court for leave to amend their Complaint in the above entitled action by interlineation as follows:

I. That leave be granted to strike out the words "within possession of" in Paragraph I of said Complaint, and in lieu thereof to interline the words "was the owner of".

II. That leave be granted to amend Paragraph VI of Plaintiffs' Complaint by inserting the following words at the beginning of said paragraph:

“That the fraudulent representations and inducements of the said O. A. Nelson to Plaintiffs consisted of the following:”

III. That leave be granted to add the following at the end of paragraph I of Plaintiffs' prayer for relief:

“That the Court adjudge the Defendant, O. A. Nelson, to be a trustee by operation of law during the period he has held said purported ‘Deed and Bill of Sale’ to said property, and that an accounting of the gold extracted from said mining ground be allowed for the period so held.”

THIS motion is based upon the records and files in the above entitled cause.

L. V. RAY &

LADY WILLIE FORBUS

Attorneys for Plaintiffs.

Cordova, Alaska.

[Endorsed]: Filed Feb 13 1935. [62]

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[Title of Court and Cause.]

HEARING ON PLAINTIFFS' MOTION TO  
AMEND COMPLAINT BY INTERLINEA-  
TION.

Now at this time this cause came on regularly for hearing on plaintiffs' motion to amend complaint by

interlineation, the plaintiffs being represented by their counsel, L. V. Ray, Esq. and Lady Willie Forbus, and the defendants being represented by their counsel, Thos. M. Donohoe, Esq.

After argument by respective counsel, the Court being fully and duly advised in the premises,

IT IS ORDERED that all of the first two amendments of said motion be allowed and the Clerk is directed to make such amendments on the original complaint filed herein, and

IT IS FURTHER ORDERED that the third amendment of said motion be, and it is hereby, overruled, and

IT IS FURTHER ORDERED that defendants' answers to the pleadings, as amended, stand as filed.

Entered Court Journal No. C-4 Page No. 359 Feb. 13 1935. [63]

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[Title of Court and Cause.]

### DECREE

BE IT REMEMBERED That on the 14th day of February, 1935, the above entitled cause came on regularly for hearing before the HON. SIMON HELLENTHAL, Judge of the District Court for the Territory of Alaska, Third Division, sitting as a Court of Equity at Cordova, Alaska, upon the Complaint of Plaintiffs as amended, and the Cross-Complaint and Affirmative Defense of the Defendants appearing separately, and the Reply of the Plaintiffs thereto, the Plaintiffs appearing in

person and through their attorneys of record, L. V. RAY and LADY WILLIE FORBUS, and the Defendants, O. A. NELSON and N. P. NELSON appearing in person and through their attorneys of record, DONOHUE & DONOHUE, the Defendants, CHARLES HAWKINS and CHARLES McMAHAN not appearing; whereupon the Court proceeded with the hearing; and the Plaintiffs having introduced testimony in their belief said cause was continued to February 15, 1935; whereupon the Court resumed the hearing and the Plaintiffs introduced further testimony in their behalf and rested; thereupon the Defendants, O. A. NELSON and N. P. NELSON, introduced testimony in their behalf and rested; and the Court having read and considered the pleadings and exhibits therein, and having heard the argument of respective counsel, and being further fully advised in the premises; and having heretofore made and entered its Findings of Fact and Conclusions of Law in writing and filed the same:

NOW, THEREFORE, BE IT HEREBY ORDERED, ADJUDGED and DECREED That that certain Deed and Bill of Sale executed by the Plaintiffs, W. E. JAMES and AGNES JAMES, husband and wife, to the Defendant, O. A. NELSON, as Trustee, [67] bearing date April 11th, 1933, recorded on April 15th, 1933, in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson as Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division,

Territory of Alaska, be and the same hereby is annulled, cancelled and set aside.

IT IS FURTHER ORDERED, ADJUDGED and DECREED That that certain Lease executed by the Defendant, O. A. NELSON, to the Defendant, N. P. NELSON, bearing date April 11th, 1933, recorded on \_\_\_\_\_ in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, as Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, be and the same hereby is declared to be null and void and is hereby set aside.

IT IS FURTHER ORDERED, ADJUDGED and DECREED That that certain Lease executed by the Defendant, O. A. NELSON, to the Defendant, CHARLES HAWKINS, being dated June 3rd, 1933, recorded on \_\_\_\_\_ in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, as Commissioner and Ex-Officio Recorded for the Chitina Recording Precinct, Third Division, Territory of Alaska, be and the same hereby is declared to be null and void and is hereby set aside.

IT IS FURTHER ORDERED, ADJUDGED and DECREED That that certain Lease executed by the Defendant, O. A. NELSON, to the Defendant, CHARLES HAWKINS, being dated February 19th, 1934, recorded on \_\_\_\_\_ in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, as Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Divi-

sion, Territory of Alaska, be and the same hereby is declared null and void and is hereby set aside.

IT IS FURTHER ORDERED, ADJUDGED and DECREED That that certain Lease executed by the Defendant, O. A. NELSON, to the Defendant, CHARLES McMAHAN, being dated..... recorded on.....in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, as Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, be and the same hereby is declared null and void and is hereby set aside.

IT IS FURTHER DECREED That the title to the property and mining [68] claims hereinafter described be and the same hereby is forever quieted in the Plaintiffs, W. E. JAMES and AGNES JAMES, as against the Defendants, O. A. NELSON, N. P. NELSON, CHARLES HAWKINS and CHARLES McMAHAN, and each of them, to-wit:

Discovery on Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

No. 5       "               "               "               "

No. 6       "               "               "               "

No. 14     "               "               "               "

No. 15     "               "               "               "

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza  
Creek

Discovery on Gold Run Creek

Discovery Annex on Gold Run Creek



No. 1 Cathenda Creek

No. 1 Little Eldorado Creek

No. 3     "             "             "

No. 1 Fraction on Little Eldorado Creek

Discovery Bench on Little Eldorado Creek

No. 1 Discovery Bench on Little Eldorado Creek

No. 2         "             "             "             "             "

No. 3         "             "             "             "             "

No. 1 Gold Bug Bench on Little Eldorado Creek

No. 2         "         "         "             "             "             "

No. 3         "         "         "             "             "             "

James Bench on Little Eldorado Creek

IT IS FURTHER DECREED That the Plaintiffs be and they hereby are awarded their costs and the sum of.....as Attorneys' fees in this proceeding; and that the Defendants be and they hereby are each denied their costs and attorneys' fees.

To all of which the Defendants except, and their exceptions are hereby allowed.

DONE in Open Court this.....day of February, 1935.

.....  
Judge.

Presented by

LADY WILLIE FORBUS.

Copy Received this February 18th, 1935.

DONOHUE & DONOHUE,

Attorneys for Defendants.

To the refusal to enter the above the Plaintiffs except and an exception is hereby allowed plaintiffs. March 13 1935.

SIMON HELLENTHAL,  
District Judge.

[Endorsed]: Filed Mar 13, 1935. [69]

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[Title of Court and Cause.]

AFFIDAVIT.

L. V. RAY, being first duly sworn, on oath, deposes and says: That he is one of the attorneys for the plaintiffs in the above entitled cause and as such attorney participated in the hearing thereof; that upon this date a portion of the testimony given at said hearing has been transcribed by the official reporter as a basis for the filing of a Bill of Exceptions and that no opportunity has, however, been had to reduce the same to narrative form, but from an examination of such transcribed record, in the opinion of affiant, a question fairly arises upon said record as to whether or not the plaintiffs did acquiesce in the possession of N. P. Nelson of and to certain mining property, the title of which is found by the Court, in its Decree, to be vested in the plaintiffs. Affiant further says that the Petition for Re-Hearing on this cause is filed at the same Term of Court during which the cause was heard and within the period of three months after the date of the Decree made in said cause and

for further information in respect to the matters herein stated, affiant refers to the records of the above entitled Court in corroboration thereof.

L. V. RAY.

Subscribed and sworn to before me this 6th day of May, 1935.

[Notarial Seal]      WARREN A. TAYLOR,  
Notary Public in and for the Territory of Alaska.

My commission expires Aug. 11th 1935.

(This Affidavit attached to Petition for Rehearing in original files and filed same date, i.e., May 6, 1935.) [73]

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[Title of Court and Cause.]

NOTICE.

THOS. M. DONOHOE, Esq.,

Attorney for the defendants above named:

You will please take notice that upon the coming in of Court at Cordova, Alaska, on the 7th day of May, 1935, at ten o'clock A. M., or as soon thereafter as counsel may be heard, the plaintiffs will seek an order of the above entitled Court permitting said plaintiffs to withdraw in said cause the Notice of Appeal heretofore served upon you and in said cause heretofore filed and to seek permission of and from the Honorable Simon Hellenthal, Judge of the above entitled Court, and who tried and heard the above entitled cause in equity, to file in said Court and in said cause a Petition for

Re-Hearing, a copy of such petition being herewith annexed and served upon you.

L. V. RAY,

of Attorneys for Plaintiffs.

Receipt of copy of Notice acknowledged this 6th day of May, 1935.

THOMAS M. DONOHUE,

Attorneys for Defendants.

[Endorsed]: Filed May 6 1935. [74]

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[Title of Court and Cause.]

MINUTE ORDER SETTING FOR HEARING  
ON ORDER RE PETITION FOR RE-  
HEARING.

Now at this time on motion of L. V. Ray, Esq., of counsel for plaintiffs, the defendants not being present nor represented by counsel,

IT IS ORDERED that the time for hearing on order re petition for rehearing be, and it is hereby, set for the Special October, 1934 Term of Court at Cordova, Alaska, on September 9, 1935.

Entered Court Journal No. S-5, Page No. 198,  
Aug 5 1935 [76]

[Title of Court and Cause.]

MINUTE ORDER RESETTING FOR HEARING ON ORDER RE PETITION FOR REHEARING.

Now at this time, on the Court's own motion, it is ORDERED that the hearing on Order re Petition for Rehearing be, and it is hereby, set for 10:00 o'clock A. M. of Wednesday, September 11, 1935.

Entered Court Journal No. C-4, Page No. 423, Sep 9 1935. [77]

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[Title of Court and Cause.]

HEARING ON ORDER RE PETITION FOR REHEARING.

Now at this time this cause came on regularly for hearing on order re petition for rehearing, the plaintiff being represented by R. E. Baumgartner, Esq., acting for L. V. Ray, Esq., attorney of record, the defendant being represented by Thos. M. Donohoe, Esq.

Whereupon, after argument by respective counsel, the Court, being fully and duly advised in the premises, took this matter under advisement and ordered that hearing on order re petition for rehearing be, and it is hereby, continued until the next term of this Court, namely October 14, 1935, at Valdez, Alaska.

Entered Court Journal No. C-4, Page No. 435, Sep 11 1935. [78]

[Title of Court and Cause.]

### HEARING ON PETITION FOR RE-HEARING.

Now at this time this cause came regularly on for hearing on plaintiffs' petition for re-hearing heretofore and on the 9th day of May, 1935, filed in the above entitled cause, plaintiffs being represented by L. V. Ray, Esq., and the defendants by Thos. M. Donohoe, Esq.

Whereupon, the Court being fully and duly advised in the premises, directed the attorneys for both the plaintiffs and the defendants to draw up and submit a supplemental and final decree for his consideration.

Entered Court Journal No. 18, Page No. 57,  
Oct 26 1935. [79]

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[Title of Court and Cause.]

### AFFIDAVIT OF NO OPINION.

United States of America,  
Territory of Alaska—ss.

L. V. RAY, being duly sworn says:

That he is an attorney and counselor-at-law and one of the attorneys of record for the plaintiffs-appellants herein. That he was of trial counsel upon the hearing of this action. That no opinion was delivered or filed in said equity cause by the Judge presiding upon the hearing thereof.

L. V. RAY.



Subscribed and sworn to before me this 20th day of January, A. D. 1936.

[Notarial Seal] R. E. BAUMGARTNER,  
Notary Public in and for the Territory of Alaska.  
My Commission expires 17th September 1939.

[Endorsed]: Filed Jan 28 1936. [81]

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[Title of Court and Cause.]

### BILL OF EXCEPTIONS.

This cause came on for hearing in Equity, before the Hon. Simon Hellenthal, Judge of the entitled Court at a session of said Court, duly held at Cordova within the Division and Territory aforesaid, on February 14, 1935; the plaintiffs were present in person and represented by their attorneys of record; Lady Willie Forbus and L. V. Ray, and Thomas M. Donohoe, Esq. of the firm of DONOHOE & DONOHOE was present representing all the Defendants in said cause, the Defendants O. A. Nelson and N. P. Nelson being personally present.

Proceedings were then had in said cause as shown by the Statement of Evidence duly approved, settled and certified as correct and complete, as follows: [82]

[Title of Court and Cause.]

STATEMENT OF TESTIMONY.

IN ORDER to sustain the issues in the above entitled cause, the Plaintiffs called W. E. James as a witness in their behalf and said

W. E. JAMES

testified as follows:

I am the Plaintiff in this action. Prior to April 11, 1933, I owned the following mining claims:

Commencing on the lower end, the Discovery of Bonanza Creek; No. 1 Above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek; No. 1 Chathenda Creek; No. 5 Above Discovery on Bonanza Creek; No. 5 Fraction Above Discovery on Bonanza Creek; No. 6 Above Discovery on Bonanza Creek; No. 1 Little Eldorado Creek; No. 1 Fraction on Little Eldorado Creek; No. 3 Little Eldorado Creek; No. 2 Little Eldorado Creek; Discovery Bench on Little Eldorado Creek; No. 1 Gold Bug Bench on Little Eldorado Creek; Gold Bug Bench No. 2 on Little Eldorado Creek; Gold Bug Bench No. 3 on Little Eldorado Creek; James Bench, right limit, on Little Eldorado Creek; 14 and 15 Above Discovery on Bonanza Creek; Discovery on Gold Run Creek; Discovery Annex on Gold Run Creek.

Prior to April 11, 1933, about February, 1933, I borrowed money from the First Bank of Cordova and the Cash Store at Chitina, about five thousand

(Testimony of W. E. James.)

one hundred odd dollars from the Bank and about twenty-eight hundred dollars [83] from the Chitina Cash Store. I gave the Bank a mortgage on all my property. I gave three notes to the Bank and one note to the Chitina Cash Store. O. A. Nelson, a Defendant in this action, was an owner with Johnny Nelson of the Chitina Cash Store. I was unable to pay the mortgage and so wrote the Bank and Mr. Nelson. The Bank sued me to foreclose the mortgage in 1932 or 1933. Afterwards, March 3, 1933, I got a letter from Thomas M. Donohoe, the attorney for the Bank.

(PLAINTIFF'S EXHIBIT 2

was offered and admitted in evidence, being a letter from Thomas M. Donohoe to W. E. James)

“March 3d 1933

“Mr. W. E. James

“Shushanna, Alaska

“Dear Mr. James:

“Mr. John S. M. Nelson of Chitina has been in Cordova and after talking the situation over with him and the officials of the Bank they have asked me to write you as the Chitina Cash Store and the Bank still hope that the matter might be straightened out, without entirely depriving you of all interest in the property.

“They have authorized me to state that if you will give a conveyance of the property such as a deed so that they may have control of its opera-

(Testimony of W. E. James.)

tion, and may make such arrangements as they desire to realize some part of the money they have coming, they will apply all amounts received upon your indebtedness until it is liquidated, and then return the property to you.

“I think myself that this would be a very fair method of handling the matter, and such preferable to foreclosing the mortgage from every one’s standpoint. [84]

“Please advise me promptly as to this, as I shall be compelled to proceed with the foreclosure suit if I do not hear from you in the very near future.

Yours very truly,

DONOHOE & DONOHOE.

By THOMAS M. DONOHE.”

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I replied suggesting that the Bank see O. A. Nelson and that we could probably fix up a deal that would be satisfactory, as I wanted to get my bills all paid up. After that, about the 10th or 11th of April, 1933, O. A. Nelson came in. He said he came as Trustee from the First Bank of Cordova. He had a deed for me to sign, made out for one dollar. There was nothing in the deed about Mr. Donohoe’s proposition, nothing said about returning my notes or getting my ground back, or about the way it took my money out, nor the way it would be applied, or that I was to vacate, simply

(Testimony of W. E. James.)

to turn it over to them. Mr. Nelson said I would have to trust the Bank. I wouldn't sign. I said I would rather give you the ground. I will give you the ground if you will pay my bills and give me a clean slate. He said he would take the proposition to the Bank and submit it to them with the understanding that if the Bank turned the proposition down he would turn that deed back to me on the first mail, which would be in about thirty days. When my wife told him "you might keep that deed," he said "I would hate to think my word wasn't good enough that I wouldn't return that deed to you people." We signed it the next morning. It was given to the First Bank of Cordova. Nelson's name was mentioned on it as Trustee. We signed it in the presence of Mrs. Johnson. Harold Gillam signed it. He was in the next room when we signed it. It was not acknowledged. Mrs. Johnson was a Notary. Mr. Nelson was Commissioner. She didn't take my acknowledgment. [85] Nelson immediately left. I got a letter from him dated April 13. .

(Testimony of W. E. James.)

(PLAINTIFFS' EXHIBIT No. 4

was offered and admitted in evidence, the same being a letter from O. A. Nelson to W. E. James and reading as follows:)

“Copy for you to keep

“April 13th, 1933

“Mr. W. E. James

“Chisana

“My dear James:

“I was busy yesterday getting a line on things and I talked with Donohoe over the phone. He said it suited the bank all right for you to have the piece of ground at the South of Eldorado. I will not have time to make a lease to it this morning, and I do not know if Gillam will stop here again before he goes directly to Chisana with your stuff. If I have time I will make the lease and send it in with Gillam on this trip, but if I do not I will send it in by the next mail and you can go ahead with your plans, knowing that it is coming in.

“The bank's first proposal was that they held the ground in trust till the debts were paid and then return the ground to you, but any unexpired leases that the Bank might give would hold until they expired. I understood that you preferred to give up all claim to the ground for all time with the understanding that you get the lease for a year on a plot of ground selected by yourself 100 by



(Testimony of W. E. James.)

100 feet, on Bonanza Creek at the mount of Little Eldorado, and also that the Bank of Cordova and the Chitina Cash Store would accept the bill of sale for the ground as full and final satisfaction for the amounts you owe the two institutions.

“I do not want any possibility for a misunderstanding and if this is the way you intended the matter to stand, I wish you would write a note on the bottom of this page to that effect and sign [86] it. It will not be necessary for Mrs. James to sign this for it is simply for my information and whatever you say is what will hold.

“Please return this by Gillam this trip if you can.

“Very truly yours,

O. A. NELSON.”

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The deed was not returned in the letter he wrote.

Q. I will ask you, Mr. James, if the lease mentioned in this letter was in accordance with your understanding and your agreement with Mr. Nelson at the time he went out?

A. Yes. I took it from that letter that the Bank had accepted the proposition. I was under that impression. O. A. Nelson said he was to return this deed, knowing everything would be all straightened up by the time that mail got back, and if it wasn't, he would send me back the deed. I thought the proposition must have went through; I took it

(Testimony of W. E. James.)

for granted the proposition must have went through, and Donohoe had passed on it favorable, but it didn't turn out that way.

I replied.

(PLAINTIFFS' EXHIBIT No. 5

was offered and admitted in evidence, the same being the reply of W. E. James to O. A. Nelson, and reading as follows:)

“Chisana, Alaska, April 16, 1933.

“Dear Mr. Nelson:

“In reply to the letter of the 13th, 1933. I prefer to the proposition of your cleaning up all of my indebtedness in First Bank of Cordova and Chitina Cash Store by deed for all time, returning me notes and receipts paid in full.

“I am to have the lease on the said mentioned ground to mine this summer or season, and to keep whatever gold I may recover from same; also the use of cabin on No. 6 Claim while mining same. I reserve my personal effects. Also giving a list of equipment that the deed covers, 1 sawmill, 35 h.p. boiler; 1 [87] steam engine, 18 h.p., 1 log building situated at mill site, 1 planer, 1 cabin situated in town Chisana, 1 cabin, log, situated on No. 1 Chathenda Creek, 1 frame cabin on 5, 1 frame cabin situated 6, 1 prospecting boiler on 1 above Discovery, 1 hydraulic plant.

W. E. JAMES.”

(Testimony of W. E. James.)

I heard nothing from Nelson from April 16, to June 30, 1933. Then I got a letter from him, and with it a lease covering the ground that I was to receive as a part of my original proposition to the bank.

(PLAINTIFFS' EXHIBIT No. 6

was offered and admitted in evidence, the same being a letter from O. A. Nelson to W. E. James, dated June 30, 1933, and reading as follows:)

“Department of Justice, Territory of Alaska.

June 30, 1933

“My dear James:

“\* \* \* When I was down at Cordova about the first of May I took up the matter of your deed with Muller. I told him that you would prefer to make it an unconditional sale with nothing coming to you at any time in the future, and have the mortgage satisfied. But Muller does not want to drop the mortgage unless the C C S will take over the proposition and assume the debt owing to the bank. We would do this if we were in a condition where we could, but at the present the matter will have to stand just as we agreed when I was in there. N. P. Nelson has a lease on part of the ground, and the royalty from his lease and any other leases will go to pay off the mortgages. When these are paid, then the royalties will go to you. Probably you have as good an idea as I have how long that will be. If we find later that we can

(Testimony of W. E. James.)

afford to take up the indebtedness to the bank, then we will have the mortgage satisfied and you will be relieved of all responsibility for the indebtedness. [88]

“Very truly yours,

O. A. NELSON.”

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On the same day the letter came, enclosing the lease from O. A. Nelson to myself, and before I had received it O. A. Nelson came to our cabin on No. 6 and said he wanted to borrow a lubricator. The other lubricator Mr. Nelson wanted to borrow, or asked for. I handed him that.

Q. What happened then?

A. He asked if I had any points. I told him I had some points, and there was some old ones needed to be fixed up a little bit there in front.

He had nothing more to say. I told him I thought there must be something wrong in this here deal I was getting into, I thought I was being double crossed. He did not reply. He walked right down on the Creek. I never saw him after that until yesterday. I did not reply to letter of June 30. I got no letters from him until October 12th, I wrote to the Bank when it looked like they were taking possession and going ahead around there—there was general talk around that Nelsons were going to operate this here property—and asked them why all this was going on. why this deed had not been

(Testimony of W. E. James.)

sent back to me. I kept no copy of my letter. I got a reply.

(PLAINTIFFS' EXHIBIT No. 8

was offered and admitted in evidence, the same being a letter from the First Bank of Cordova to W. E. James, and reading as follows:)

"September 15, 1933

"Mr. W. E. James, Chisana, Alaska

"Dear Mr. James:

"We are in receipt of your letter of September 10, asking why your notes have not been returned to you. We wish to advise you that under date of July 27, 1933, we forwarded your notes, totaling \$2801.50 to Mr. O. A. Nelson of Chitina. [89] As you know Mr. Nelson gave us his note in lieu of yours, and the mortgage which we held was assigned to him. Therefore you will have to look to Mr. Nelson for these notes.

"Yours very truly,

T. G. NESTOR,

Cashier."

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This was the first notice I had that the notes and mortgage had been transferred to Mr. Nelson. I wrote Mr. Nelson between September 15 and October 12. I got a reply.

(Testimony of W. E. James.)

(PLAINTIFFS' EXHIBIT No. 9

was offered and admitted in evidence, the same being a letter from O. A. Nelson to W. E. James, and reading as follows:)

“Department of Justice, Territory of Alaska,

“Chitina, Alaska, October 12th, 1933

“Mr. W. E. James, Chisana, Alaska

“My dear James:

“On the 11th of April you made a deed and bill of sale for the mining claims and personal property. After naming the several mining claims the bill of sale reads: ‘and also together with a sawmill and cabin located near the postoffice in the town of Chisana, Alaska, and one large cabin located in the town of Chisana and known as the James Cabin; and also together with all houses, buildings, pipes, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith.’

“On the 20th of April I gave you a lease on a plot of ground at the mouth of Little Eldorado Creek which lease expired at the first of October, 1933.

“The deed and bill of sale was an outright and complete transfer of title, but at the time we considered both the propositions of returning the property to you, if and when the indebtedness had been paid, and of making the transfer permanent. I have



(Testimony of W. E. James.)

a signed statement from you in which you say that you prefer to make the sale permanent on condition that the mortgage be cancelled and the notes returned to you. [90]

“I now hold the mortgage and notes and they are a valid lien against any property you have until they are satisfied or returned to you and discharged.

“N. P. Nelson has possession of all of this property and you are hereby authorized to turn over to him all of the property named and described in the bill of sale. I am sending him a copy of this letter with instructions to receive this property and to check up thoroughly on the same, which he is in a position to do, as he knows what was on the ground at the time the mortgage was made.

“As soon as I receive word from N. P. that you have turned over all of the property covered by the deed and bill of sale, and have vacated the ground completely, and have met all of the terms of the above named deed and bill of sale, then I will send you the notes named therein and will send you the mortgage with the endorsement that it has been fully satisfied.

“Very truly yours,

O. A. NELSON.”

I know N. P. Nelson. He was in partnership with me from 1912 to 1914. There was no partnership when these transactions were entered into. I had had nothing to do with him for sometime prior.

(Testimony of W. E. James.)

Q. When did you first know about N. P. Nelson and any lease he claimed on this property?

A. As a laborer there. He said he was just a laborer there, working for O. A. Nelson. He never acknowledged to us of course—I never talked to him very much, but the first time he came in we had heard rumors——

Q. Well, don't tell anything about rumors.

A. Well, we were talking to him and he said "I am broke, you are broke." I said "I know I am broke." He said [91] there was some fellow coming in prospecting ground for O. A. Nelson.

Q. Did he come upon your ground?

A. I saw him up there later on. I have a cabin there on Five, a kind of community cabin, the only one around where people come up and stop, and stay as long as they want to. He asked me if he could stop in my cabin. I said "sure."

Q. Was he working on your ground during that period of time?

A. I never saw him right on the ground.

Q. Where was he working, if at all?

A. Well, later in the summer he was working up on the right of way for a flume.

Q. But that was not upon your property?

A. No.

Q. You had no notice or knowledge that he was there in any interest, or regard to this deed or lease at that time?

A. No.

(Testimony of W. E. James.)

Q. When you received this letter of October 12th, was this the first time you knew he had any possession of the ground?

A. Yes.

On October 18, I replied to O. A. Nelson's letter of October 12.

(PLAINTIFFS' EXHIBIT 10

was offered and admitted in evidence, the same being a copy of a letter written by W. E. James to O. A. Nelson, and reading as follows:)

"Chisana, Alaska, October 18, 1933

"Mr. O. A. Nelson: [92]

"Yours of 12th instant October 1933 to hand, contents noted. In reply must call attention to some of the facts that seem to have passed out of your memory.

"First we intrusted you to a deed made out by the First Bank of Cordova for considerable property, valued at by me at *the from* \$75,000 to \$150,000 to the First Bank of Cordova, Alaska.

"You honor bound yourself that you would present this deed to the Bank with our proposal, as you know was just this: If the Bank would cancel all my notes, mortgages, and to pay other creditors most of which you made note of. One was called in and at your request and you promised her, Mrs. Earl Hirst, that you would settle their account that I owe them, as you were representing the First Bank of Cordova.

(Testimony of W. E. James.)

“If the Bank would not accept this proposal you were to send the deed back to me return mail and the First Bank could go ahead with the foreclosure proceedings they had started.

“As to giving me a lease on a piece of ground to work this summer, could not be valid, as the First Bank of Cordova was a mortgager only.

“The deed was not valid as they evidently did not accept my proposal.

“The equipment on my property is intact all on the ground, and will stay there as long as I hold possession.

“I don’t care and it don’t interest me what N. P. Nelson knows or does not know. When I give up this property all the documents involved will have to be placed in uninterested parties’ hands while I make transfer.

W. E. JAMES.” [93]

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About April 11, before so-called deed was signed, in the presence of Mrs. Earl Hirst, I gave O. A. Nelson a list of each of my creditors and the amounts I owed them, and he wrote it down in his notebook as I dictated it to him. Mrs. Hirst asked Nelson if the Bank was going to pay her bill. He said if the bank accepted the proposition, they would pay all the bills. In reply to my letter of October 18, I got a letter from O. A. Nelson. I turned it over to my lawyer, Mr. Ray. It is lost now. I re-

(Testimony of W. E. James.)

ceived it the first of November. It said I must vacate and turn over all the equipment and claims of property to N. P. Nelson. He says "I hold the mortgage, deed, notes; if you get any more property in the future, I will grab on to that." I went to Valdez and turned my case over to Mr. Ray. After I got back from Valdez, I was walking by N. P. Nelson's cabin. He said "O. A. Nelson has sent you in a package of papers, you better come in and get them." My wife opened them and I noticed these notes. I didn't take them. I said the deal hadn't been fulfilled and it was all off. I remained on the ground. I had possession of the ground. I have been a mining man about forty-four years, thirty-seven years in Alaska. I discovered this property. I managed, supervised and did the mining myself. My mining property included in this mortgage and deed is about \$150,000 at this time. If the Bank had accepted the trust, it was to run for five years. [94]

#### Upon Cross-Examination

by counsel for Defendant, this witness testified as follows:

I took out a little over two thousand dollars in 1932, but very little in 1931, around eight thousand in 1930, about three or four hundred dollars in 1931. The bed of the Creek which is in the claims included in this complaint is pretty well worked out. It was some time before the foreclosure since

(Testimony of W. E. James.)

I had made payments on the mortgage. Johnny Nelson had paid the interest for a year or two. I suggested O. A. Nelson as commissioner. I knew he had a personal interest in this. I wrote a letter to you March 9, 1933.

(DEFENDANTS' EXHIBIT A

was offered and admitted in evidence, the same being a letter from W. E. James to Thomas M. Donohoe, and reading as follows:)

“Chisana, Alaska, March 9, 1933

“Mr. Thomas M. Donohoe, Cordova, Alaska

“Dear Mr. Donohoe:

“Your letter of the third instant to hand.

“If you will send Mr. O. A. Nelson in here at an early date I am quite sure for my part that we can make a deal along the lines you mention in your letter, as I do not want to put anything in your way to delay paying them or the bank up.

“It is possible for them to take out that amount this summer, as I have practically all the dead work done. They will have to start their work by the first of April.

“Yours sincerely,

W. E. JAMES.”



(Testimony of W. E. James.)

Mr. DONOHOE: The letter reads as follows:

(Excerpt from Exhibit B)

“Chisana, Alaska, October 3d, 1932

“First Bank of Cordova, Cordova, Alaska

“Dear Mr. Muller: [95]

“We could not find the pay on the cut I stripped off this Spring. I am sure disappointed, as it was a favorable piece of ground. The pay must of cut into the bench, as it was good above and also below where we worked this year.

“After testing it out and could find no pay, I came up to Little Eldorado Creek and excavated for a dam on No. 3 Little Eldorado. And I am at this time driving a tunnel into the bench, with the intention of taking out a dump this winter.”

---

Q. Mr. James, this letter is dated on October 3d, the same season you testified you took out \$2,000.

A. It was 1931.

Q. Oh, it was 1931 you took out the \$2,000?

A. Well, I was a little confused, mixed up. In 1930 we went in; that is the year we didn't take out very much; next year we took out quite a lot; next year only about \$300.00.

#### (DEFENDANTS' EXHIBIT C

was offered and admitted in evidence, over the objection of Plaintiffs, exception to which was allowed,

(Testimony of W. E. James.)

the same being an instrument marked "Deed and Bill of Sale" and reading as follows:)

"Deed and Bill of Sale

"This indenture, made this 11th day of April 1933, between W. E. James and Agnes James, husband and wife, of Chisana, Alaska, the parties of the first part, and O. A. Nelson, Trustee, of Chitina, Alaska, the party of the second part, witnesseth:

"The said parties of the first part, for and in consideration of the sum of \$1.00 and other good and valuable consideration by them received, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns, the following described property: [96]

"Placer mining claims, Discovery on Bonanza Creek, No. 1 above Discovery on Bonanza Creek, No. 5 above Discovery on Bonanza Creek, No. 6 above Discovery on Bonanza Creek, No. 14, above Discovery on Bonanza Creek, No. 15, above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek, No. 5 Fraction above Discovery on Bonanza Creek, Discovery on Gold Run Creek; Discovery Annex on Gold Run Creek, No. 1 Chathenda Creek, No. 1 Little Eldorado Creek, No. 3, Little Eldorado Creek, Discovery Bench on Little Eldorado Creek, No. 1 Discovery Bench on Little Eldorado Creek, No. 2 Discovery Bench on Little Eldorado Creek, No. 3 Discovery Bench on Little

(Testimony of W. E. James.)

Eldorado Creek; No. 1 Fraction on Little Eldorado Creek; No. 1 Gold Bug Bench on Little Eldorado Creek; No. 2 Gold Bug Bench on Little Eldorado Creek; No. 3 Gold Bug Bench on Little Eldorado Creek; and James Bench on Little Eldorado Creek; all situated on Gold Run and Bonanza Creeks and tributaries, in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and also together with a saw-mill and cabin located near the postoffice in the town of Chisana, Alaska, and one large cabin located in the town of Chisana and known as the James Cabin; and also together with all houses, buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith.

“To have and to hold the same, together with the dips, angles, spurs, ores, minerals, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever. [97]

“The said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, executors and administrators, all and singular, the premises hereinabove conveyed, described and granted, or mentioned, with the appurtenances,

(Testimony of W. E. James.)

unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend.

“In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

“W. E. JAMES (typewritten) Seal.

AGNES JAMES and typewritten Seal.

Signed, sealed and delivered in the presence of  
LUELLA JOHNSTON,  
C. H. GILLAM.”

The signature is mine and Mrs. James, Mrs. Johnston and Mr. Gillam's. The first page don't read the same as the one I signed, I have read the complaint. I made the proposition to Mr. Nelson, not to Mr. Nelson himself, but for the First Bank of Cordova, that he should take the ground and keep it forever. The Chitina Cash Store was involved in it, they were the endorsers on my \$2800 note. My reply of April 16, Plaintiff's Exhibit 5, is an exact copy.

#### (DEFENDANTS' EXHIBIT D

was offered and admitted in evidence, the same being the original answer a copy of which was Plaintiff's Exhibit 5, and the pertinent part reading as follows:) [98]

(Testimony of W. E. James.)

“Chisana, Alaska, April 16, 1933

“Dear Mr. Nelson:

“In reply to this letter of 13th, 33, I prefer to the proposition of yours cleaning up all of my indebtedness of the First Bank of Cordova and Cash Store by deed for all time, returning me notes and receipts paid in full . . .”

---

In the first letter, the 13th, I was under the impression the way he wrote that they had accepted; they kept me under that impression all the time up until October 12th. They were deceiving me all the time. The idea of writing these letters was to get me to commit myself, and get me off this main deal they were trying to get off. They agreed to pay off all the indebtedness. The Frank Mais bill was not included. It was paid by me.

Q. There was no other indebtedness, answered in this letter except the indebtedness of the First Bank of Cordova and the Chitina Cash Store?

A. No, I didn't go into it.

Q. You testified this morning Mr. James that Mr. Nelson made you a positive agreement that he would pay all your indebtedness.

A. If the Bank accepted this deal.

Q. Did you include in that the—did he promise to pay the claim of Mr. Arnolds against you?

A. No. That was an account we didn't put in, because I told him probably there were a couple we didn't have in mind at the time. And there was

(Testimony of W. E. James.)

a question about the Arnold account anyway, we didn't have a settlement.

Q. Arnold's account was a foreclosure of a lien on these [99] mining claims; he filed suit?

A. Yes, he filed a suit.

Q. You didn't include that claim?

A. No. It was questionable whether Arnold had anything coming.

The Kennicott Copper claim for hospitalization, I never guaranteed. I didn't mention that claim. There was no claim there. He agreed to pay off, not exceeding \$2500.00.

#### (DEFENDANTS' EXHIBIT E

was offered and admitted in evidence, the same being a letter from W. E. James to O. A. Nelson dated May 16, 1933, and reading as follows:)

"Chisana, Alaska, May 16, 1933

"Mr. O. A. Nelson, Chitina, Alaska

"Dear Mr. Nelson, I would like to have you send me a copy of the deed I made to the First Bank of Cordova,

Yours sincerely,

W. E. JAMES.

"P. S. Please send all notes to me as per understanding, receipt in full from First Bank of Cordova and Chitina Cash Store."

Signed "W. E. JAMES."



(Testimony of W. E. James.)

Mr. Nelson came in June 30th, and about June 30th signed lease and returned it to O. A. Nelson.

“Q. That came in approximately the same time as that letter you introduced in evidence this morning as Plaintiff’s Exhibit 6. That is correct is it?

A. Yes.

Q. You signed it and returned *to* to Mr. Nelson?

A. Yes.

He asked about sluice boxes. I told him these particular boxes didn’t go with the deal because they weren’t included in the ground. [100]

Q. You recognized at that time that this deal was still in force?

A. Well, I hadn’t gotten—I was in doubt about it because I told him, I said I was getting double crossed. So that is what I told them about them coming in and going to work on the ground, that he hadn’t fulfilled his agreement.

Not one word did he tell me that the Chitina Cash Store was making arrangements to take over these notes. I do not recall any conversation with Harry Boyden and Ira Mortridge. I did not make a statement substantially that the ground was worked out, the Bank and the Store were stuck, that I had a little gold dust, and wanted to pay some bills, particularly Joe Davis \$25.00, and that I was going to 40-mile by the way of Dawson, and that I had made a good deal. I did not joke about N. P. Nelson being stuck in his operations on the ground, and that they wouldn’t get anything for the sea-

(Testimony of W. E. James.)

son's work. I never talked to Harry Boyden about this case or N. P. Nelson's operations. I never told Joe Davis that in the deal with Nelson I had reserved a piece 100 by 100 for the summer, and that I could get enough to pay the bills around town, including his \$25.00, and that I was glad to get out of it as easy as I did.

Joe Davis didn't tell me he had been sent by N. P. Nelson to remove pipe lines from the creek. He helped me move my own pipe line. He happened along when I was doing it myself and said "I will give you a hand."

No. 2 Little Eldorado belongs to Joe Davis. Mine is Discovery Bench, Little Eldorado Creek.

(It is stipulated in Open Court that No. 2 Little Eldorado Creek should be stricken from the Plaintiffs' Complaint.)

I consider that Mr. Nelson violated this agreement on October [101] 12th. I was suspicious on June 30th. I gave O. A. Nelson nothing. He was in this as a trustee with my proposition to take up to the bank there. I didn't expect to get the ground back, if they paid off my bills, gave me a little ground to work. Then I was all through, but they didn't do that.

Q. All these claims, Mr. James, with the exception of this No. 2 which has been stricken, belong to you, and the title is in your name personally?

(Testimony of W. E. James.)

A. Yes, unless it would be 14 and 15. She staked some claims; I don't remember just which they were.

Q. That is 14 and 15 Above Discovery?

A. Yes, we staked some claims; I don't know whether we staked them jointly, but anyway they were all together in the family.

Q. Well, I wanted that perfectly clear so there is no misunderstanding that that was the only deal you entered into with Mr. Nelson. Now, Mr. James, on the 21st day of August, 1933, did you relocate claims No. 14 and 15 Above Discovery on Bonanza Creek under power of attorney under the name of Mrs. Sarah Galoski?

A. I think my wife made a location up there.

Q. Did you not yourself, *ask* attorney-in-fact for Mrs. Sara Galoski?

A. But the ground ran out there.

Q. These are two of the claims involved in this action?

A. They were staked as wild cats, and we never did any more work. [102]

Q. You did relocate those claims under date of August 21, 1933?

A. No.

Q. Do you recall, Mr. James, signing a location notice?

A. No I didn't.

Q. Mr. James, did you make a proposition to John Carroll that he should relocate some of the

(Testimony of W. E. James.)

other claims mentioned in this ground, and afterwards give you half interest?

A. No, not me. He asked me if that ground had run out. I said I thought it had. But my wife made some proposition with him that they would *to* up and stake the two wild cat claims, but myself, I didn't want to have anything to do with them. To the best of my knowledge the title was good as I had them.

Q. Mr. James, you didn't know that N. P. Nelson was working any of this ground until October of 1933?

A. Mr. Nelson never——

Q. Will you please answer my question? Did you know whether he was working or not?

A. He commenced work; the first I saw him doing on the ground was this spring.

Q. This Spring?

A. Yes.

Q. You mean 1934?

A. 1934.

Q. You didn't know whether during the season of 1933 he was doing any work on the ground?

A. I don't think he did any work. He said he was going up the Creek there; it might have been he was working up on Seven or Eight along there. [103]

Q. Did you turn any cabins over to him?

A. I loaned him a cabin on Five, relief cabin, where everybody comes in who wants to stop.

(Testimony of W. E. James.)

Q. Did you turn over any pipe or flume to him?

A. No.

Q. Any sluice boxes?

A. No. I turned nothing over to him; I battled with him.

Q. You didn't even know he was working that ground during the year of 1933?

A. I don't think he was working.

Q. Or that he had taken possession of any of the other property?

A. I had possession myself.

I didn't know Charles Hawkins had taken possession of any ground. I saw him down in the Spring this year; I heard the rumor around, but I didn't know he was working. By this year I mean 1934. I was not up and down the Creek in 1933 very much. It was rumored around that N. P. Nelson, Charles Hawkins and Charles McMahan were working this ground, but did not investigate myself. There was no one up there. I heard in the Spring that Hawkins was up on Discovery Claim. I waited there for a period; I never saw him working around there at all; I saw where there had been work done. I did not see him working.

Upon re-cross examination witness W. E. James testified:

Q. You haven't sufficient water in the stream to work the bench ground there now?

A. No.

Whereupon the Plaintiffs called

AGNES JAMES [104]

as a witness, testifying in her own behalf as one of the Plaintiffs as follows:

I am the wife of W. E. James. I was present on April 11 when Mr. Nelson came. He said he came as trustee for the Bank of Cordova. He made the proposition just as that letter you read. He said we will have to take the Bank's word. He said they would take over the proposition and work it to suit themselves. Mr. James turned it down. He said we would rather let the Bank have the whole thing if they would straighten up all his indebtedness to the two institutions and send him back his notes and have everything cleaned up, for he wanted a clean slate, that is the way he put it. Mr. Nelson asked what other bills we owed. We told him we owed Earl Hirst in Chisana and other bills, and he made a memorandum. He sent me over to Mrs. Hirsts to get her bill. She brought the bill over. She presented it and said "is the Bank going to pay the bills?" He said "if the proposition goes through the bank will pay your bills." He said "if the Bank don't accept the proposition it is to be returned on the next mail." We went to the post-office and signed. Gillam was in the other room when we signed and when Mrs. Johnson signed as witness. I looked at the deed. I read just the two lines at the top. It said "DEED" and about the second line it said Nelson was made trustee for



(Testimony of Agnes James.)

the First Bank of Cordova. I wasn't pleased with it, so I just signed the paper. The next I saw it was in Mr. Donohoe's office in Cordova. It was "DEED and BILL OF SALE" that he showed us. When we signed the deed, I said you could keep the deed and not send it back. He said "I would hate to think my word wasn't any good." [105]

Nelson came to Chisana about June. He said he came as Trustee for the Bank of Cordova. He asked about some boxes I told him they didn't belong on the ground, they were mine, and I sold them.

#### Upon Cross-Examination

by counsel for Defendant, this witness testified as follows:

I have read the complaint. Mr. Nelson and the First Bank of Cordova were not to hold the ground forever. If the proposition went through, they would have it forever, if they settled up our indebtedness, but if not they would send it back and go ahead with the foreclosure. There was no agreement to hold the ground in trust for five years. That was the proposition first discussed when he came in there; they wanted us to vacate, and the Bank work it to suit themselves, but they wouldn't say what percent would apply on our indebtedness. I signed the mortgage given the Bank in 1930. I was a witness to a location notice signed by my husband as attorney in fact for Mrs. Sarah Galoski, relo-

(Testimony of Agnes James.)

eating Claims Fourteen and Fifteen Above Discovery, which were included in deed and mortgage. Those claims had run out. We didnt know whether there was any gold ever found up there. When Mr. Nelson came on June 30, he stayed only a few minutes in the house; they were looking at a lubricator. Discovery Placer and Discovery Annex were claims covered within the mortgage. I made a deal with Mr. Carroll to re-locate them in his name, giving me half interest at a time when bank had started suit to foreclose mortgage. I don't know if they were in the deed. They had run out. The last assessment work recorded was for [106] 1930. The second page of the deed is correct. It is my signature. The first page is not the deed. I read the replies before filing. They are incorrect. I am positive that it is not the deed. I didn't have any conversation with Joe Davis about paying him \$25.00. Mr. James and I were taking the pipe line out of the Creek when he came down. He asked if he wanted help. I didn't say anything to Joe Davis, but he did mention \$25 down at the airplane landing last year. He said "what about the Simonds Estate bill of \$25." I said, "you couldn't expect us to pay, we turned that in for the Bank to pay." This is the only time Joe Davis asked us to pay. There was no conversation on September 28, 1933, in my presence by Joe Davis that N. P. Nelson had asked him to take the pipe line out of the creek, and that

(Testimony of Agnes James.)

Mr. James said it was all right and said he would help remove it. I did not state in the presence of Mr. James, Henry Boyden and Ira Morbridge that the Bank and Cash Store were stuck, that the ground was worked out and of no value, that we were going to leave and go to 40-Mile up by Dawson, that I had made a good deal by turning the ground over; that N. P. Nelson was stuck, and they wouldn't get anything out of the ground; that I had some bills I wanted to pay, especially to pay Joe Davis, before I left, from some gold dust I had recovered that season. I don't know Ira Morbridge by name, unless I'd see him. O. A. Nelson came to property about June 30th, said he was checking up on material, asked for sluice boxes, sledge, dynamo and lubricator. I told him sledge was forty miles away and it and dynamo had no connection with mortgage. Any property covered by the mortgage I was willing [107] to give to the First Bank of Cordova, not to Mr. O. A. Nelson, our dealings were with the Bank: if the Bank had cleared all our indebtedness we would have walked off, but they did not do it. Nelson went away with the lubricator. We included Frank Mais in the list of bills, but we paid him in the Fall of 1933. N. P. Nelson was not working on any of the ground in 1933. He flew in the early part of May, 1933, and came up the creek and started to work on Seven and Eight. There was no work done on the claims

(Testimony of Agnes James.)

there at all; but still there were notices on all the claims that the ground belonged to us, they tore the notices off the house and sawmill. Notices were posted in October 1933 and some after Mr. James got back from Valdez seeing Mr. Ray. N. P. Nelson had not been using the pipe line or flume during 1933. He was doing dead work to bring the water down, making a ditch to run the flume through to take water off to one of the benches. He started to work July 15, the same day he came up the creek. I didn't turn the cabins over to N. P. Nelson but in April, 1934, he broke into the cabin. I was downtown getting ready to go up to the Creek. He threw out all my personal things. What he didn't need he threw out. All summer they were in the rain and snow. I stayed out and slept on the ground while he took my cabin. I had not been living in this cabin since the Fall previous. We lived downtown in Chisana in the winter time. Our lease had expired when Nelson moved into the cabin. I never told N. P. Nelson to go in and break open the lock, but he was told by O. A. Nelson to break open the lock, Nelson said he told him. In 1933, we turned the James cabin over to Nelson. He put his stuff there. We were waiting to straighten up this business, thinking everything was going to be all right. [108] The deal wasn't closed yet when Nelson came in. We naturally let him have the cabin.

Q. Were any of the other cabins turned over to N. P. Nelson in 1933?

(Testimony of Agnes James.)

A. In 1933 there was—they had quite a lot of tonnage come in there; we were waiting to straighten up this business thinking everything was going to be all right. N. P. Nelson had no place to put his gasoline, and the James cabin was under mortgage, so he put his stuff there.

Q. You didn't object?

A. Well, the deal wasn't closed yet when Nelson came in; we naturally let him have it to put his stuff in; there was no other accommodation there for him to put his gasoline, and they had tons, barrels of it in cases.

No pipe lines, sluice boxes, no other cabins nothing was turned over to N. P. Nelson. In the Fall of 1933, I was not planning to go to the 40-Mile District. I have done all the pioneering and hardships I want without going into a country like that. I wasn't planning to leave Chisana until everything was straightened up, and they didn't straighten up, so I stayed.

Re-Cross Examination.

In the Fall of 1933 we paid Frank Mays bill.

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Whereupon Plaintiffs called

MARGARET HIRST

as a witness in their behalf and said Margaret Hirst testified as follows:

(Testimony of Margaret Hirst.)

I am the wife of Earl Hirst. I know Mr. and Mrs. James and Mr. O. A. Nelson. Mrs. James came to our place in April, 1933 [109] for our bill against the James to turn over to O. A. Nelson for him to turn over to the Bank. I overlooked one. I took that over to Mrs. James to Mrs. James' cabin. Mr. and Mrs. W. E. James and O. A. Nelson were there. I told O. A. Nelson I had overlooked that one bill and I asked him if the Bank was assuming the bills against the James, and he said "yes." And I said "Will the Bank pay the bills" and he said "yes." The whole bill was close to a thousand dollars. It was a written bill, just the amount of the bill; I just handed it to him like this and he looked at it and folded it up and put it in a little note book, and put both in his pocket. I then went home. That is all I know.

#### Upon Cross Examination

by counsel for defendants, this witness testified as follows:

It was between nine and twelve o'clock when the conversation took place. They did not discuss the particular deal they were making. Mr. Nelson stated that the Bank would take care of those bills and we would get our money. Mr. Nelson and my husband were talking out in front while I was cooking dog feed. I did not hear them.



Whereupon Plaintiffs called

EARL HIRST

as a witness in their behalf and said Earl Hirst testified as follows:

I am the husband of Margaret Hirst. I had a conversation with O. A. Nelson about the James' indebtedness in front of our cabin. He was going by and I called him over. It was in April two years ago. All I asked him was what were they going to do about the bills they owed us. By "they" I mean [110] the Bank. I asked him if I could get my money. He said if the deal went through, the Bank would pay all outstanding bills and I would get mine. I have never been paid either from Mr. Nelson, or the Bank, or the James. Two years before that I had filed a freight claim with the Commissioner, but it was postponed.

Upon Cross-Examination

by counsel for defendants, this witness testified as follows:

Several years prior to this conversation I had filed a claim with Mr. Nelson as United States Commissioner. It was dropped. I did not refer to that when I talked with Mr. Nelson.

Q. Did he tell you if there was any way in which they could help you get the money, they would see it was done?

A. No, he didn't say that. He said if the deal went through the Bank would pay it, he would see to that.

Had no knowledge what particular deal was under discussion.

Whereupon, Plaintiffs called

O. A. NELSON

as a witness in their behalf, and said O. A. Nelson testified as follows:

I am United States Commissioner for the Chitina Recording Precinct, Territory of Alaska. A part of my duties is to record deeds, mortgages, and other instruments. I received a latter from Mr. L. V. Ray, Attorney for Mr. James, requesting me to furnish him a certified copy of a deed or some kind of paper, that the James had had recorded or that I had recorded. [111]

(PLAINTIFFS' EXHIBIT 11

was then offered in evidence, to which the Defendants objected upon the ground that the letter to Mr. Nelson from Mr. Ray is not pertinent and not competent to the testimony herein. Whereupon the Plaintiffs in support of the introduction of said evidence stated that the purpose of the testimony was to show that the complaint was based upon a certified copy and not the original instrument. The objection was sustained, and exception taken and allowed.)

I wrote a letter in reply to Mr. Ray's letter to me.

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(Whereupon

PLAINTIFFS' EXHIBIT 12

was then offered in evidence, being a letter from Mr. Nelson to Mr. Ray in reply thereto, to which

(Testimony of O. A. Nelson.)

the Defendants objected upon the ground of incompetency and not within the issue in this case. Whereupon the Plaintiffs supported their offer by the same argument as for Exhibit 11. The objection was sustained, and exception taken and allowed.)

Thereupon, the Plaintiffs closed their case.

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Thereupon, the Defendants to sustain the issues on its part called as a witness

O. A. NELSON

one of the Defendants in the action, who testified as follows:

I reside at Chitina. I run a general mercantile business. Chitina Cash Store, drug store. John S. Nelson was my partner, now deceased. The James were indebted to the Cash Store, part a bill they owed the store, and the Chitina Cash Store was the indorser on a note for twenty-eight hundred and fifty dollars. I was in Chisana April 11, 1933, and had a conversation with W. E. James and Mrs. James on that day. I went in there at the suggestion of the Bank, to make an arrangement with the James, as they suggested, to take over their property in payment of this indebtedness. We talked about two hours. We first talked of the idea of the property was to be deeded to me; I was to hold it in trust, and the Cash Store and the Bank together would [112] hold the ground and work it with the idea of recovering what they could from

(Testimony of O. A. Nelson.)

the ground on this indebtedness. Mr. James said he would much prefer to make an outright deed to the property in lieu of the indebtedness to the Bank and the Chitina Cash Store. That what he wanted was to get that mortgage disposed of. There was talk of the idea of my holding it in trust after the indebtedness to the Bank and Store had been paid off, if I was to continue holding it for the purpose of paying up this further indebtedness; they owed several people around the country. The final understanding was, they said they wanted to call this deed an outright and final settlement, and the only consideration they wanted was that I give them a lease on a certain piece of ground on Bonanza Creek. The deed was to settle up the notes they had given to the Cash Store and the Bank. I did not promise to pay other creditors. I had no authority to enter into such an agreement from the Bank, and I did not do so for myself either. They were to have a lease on a piece of ground at the mouth of Little Eldorado Creek till the first of October. James said he could make a little money on this ground, that he wanted to get enough money together and go to 40-Mile. I made no agreement with James as to when the papers were to be sent to him. I told him I would return and take the matter up with the Chitina Cash Store and see if it was satisfactory to them; if it was, I would on the returning mail either send the lease or cancel the deed. I saw the Deed and Bill of Sale signed.

(Testimony of O. A. Nelson.)

It is exactly the same as signed. No changes have been made in this instrument since its signature. When I returned to Chitina, I made a lease to Mr. James and sent it to him. To avoid a possible misunderstanding as to what the [113] final agreement was, I wrote that letter (Plaintiffs' Exhibit No. 4, Defendants' Exhibit D) to Mr. James to request that he write me if that was the way he wanted the matter to stand. I saw the James on June 30th. I went down primarily to ask them about some property named in the deed. I asked them what right they had to dispose of sluice or flume boxes that had been put on the property and taken away by one Jack Carroll. Mrs. James assured me that those boxes were not my property, that the boxes had been brought on the ground after I bought it, and she had a perfect right to dispose of them. I asked about the lubricator and some sleds. James said the sleds were down at the cabin at Chitina and were his personal property. He enumerated certain property belong to me by reason of the deed, and at that time he protested—as he put it—in being doublecrossed, in that I hadn't sent the notes. I told him I would send them as soon as I had gotten them from the Bank. He didn't tell me the deal was off; the only thing he said at all was his protest that we had not sent those notes in to him. We paid the bank the amount of the secured notes about a week later.

(Testimony of O. A. Nelson.)

(Defendants' Exhibit F

was offered and admitted, the same being notes held by the Chitina Cash Store and the First Bank of Cordova; whereupon it was stipulated between the parties that the same may be considered as read.)

These are the promissory notes I received from the Bank of Cordova. I paid the Bank for these eight—one hundred and twenty-two dollars and some cents. There was about \$530 open account of the store, and \$1945 was a note they owed the store.

(Defendants' Exhibit G

was offered and admitted, the same being a note held by the Chitina Cash Store signed by W. E. James; whereupon it was stipulated between the parties that the same may be considered as read.)

[114]

The \$2860 note was included in the notes and mortgage. There was \$14.00 interest due on these notes. I think that is all the items. I gave three leases to a portion of the ground covered by the Deed, one to N. P. Nelson covering little Eldorado for ten years from the time the lease was made about two years ago; I gave a lease to Charlie Hawkins on No. 1 Chathenda, Discovery Fraction on Bonanza; and I gave a lease to Harry Sutherland for a couple of claims over on Cache Creek—on Gold Run Creek I should have said. He was a partner with Hawkins; his interest was embraced by the lease to Hawkins.



(Testimony of O. A. Nelson.)

(DEFENDANTS' EXHIBIT H

was offered and admitted, the same being a lease from O. A. Nelson to N. P. Nelson covering Little Eldorado; whereupon it was stipulated that the same be considered as read.) (The lease is in words and figures as follows:)

LEASE

THIS AGREEMENT, made and entered into this 17th day of April, 1933, by and between O. A. Nelson, first party and N. P. Nelson, second party; WITNESSETH:

That the first party for and in consideration of the sum of One (\$1.00) Dollar and other good and valuable considerations to him in hand paid by the second party, the receipt whereof is hereby acknowledged and of the rents, conditions and covenants to be paid and performed by the second party as hereinafter set forth does hereby lease and remiss to the second party, upon the terms hereinafter expressed, the following described placer mining ground situated in the White River Mining District, Territory of Alaska, and more particularly described as follows, to wit:

All of the bench ground lying opposite No. One on Little Eldorado Creek and extending up to No. 8 on Bonanza Creek. [115]

No. Five Above Discovery on Bonanza Creek, 1320 x 660 feet, more or less.

(Testimony of O. A. Nelson.)

No. Five Fraction Above Discovery on Bonanza Creek 78 x 660 feet, more or less.

No. Six Above Discovery on Bonanza Creek 1320 x 660 feet more or less.

No. One on Little Eldorado Creek, 1320 x 660 feet, more or less.

No. One Fraction on Little Eldorado Creek 81 x 660 feet, more or less,

No. One Discovery Bench on Little Eldorado Creek 1320 x 660 feet, more or less,

No. Two Discovery Bench on Little Eldorado Creek 1320 x 660 feet more or less,

No. Three Discovery Bench on Little Eldorado Creek 1320 x 660 feet more or less,

for a term to expire on the first day of October, 1942, nineteen hundred forty-two, unless sooner terminated by a failure to do and perform the terms, covenants and conditions of this agreement; and the second party agrees that he will enter into possession of said hereinbefore described properties and will during the said period work, mine and prospect parts and portions thereof, and said mining operations shall be carried on by him in a workman and minerlike fashion, and in a manner having in view the preservation of said claims as workable mines; and that from the gold extracted from said property he will pay to the said first party as royalty ten (10%) per cent of the gross amount of gold [116]

(Testimony of O. A. Nelson.)

—Provided also that the said lessee N. P. Nelson shall have the use of the pipe, tools and equipment now on Bonanza Creek and formerly in the possession and belonging to W. E. James, and also the use of the saw mill located at Chisana insofar as the said saw mill may be owned by, in the possession of, or controlled by the said lessor,—mined and extracted by him from said claims, which said royalty shall be paid to the first party immediately after each cleanup; that the first party hereby reserves the right to be present at each and every cleanup, either in person or by a representative, and also the right to pan the ground for the purpose of determining the values of gold contained in said ground.

The second party agrees that he will not allow any valid lien or encumbrance to be created against said property for work or labor done in mining or development of said property, or for good, wares, or material used in mining or development of the same; That the second party shall not sublet, without the consent of the first party in writing, any part or portion of the property hereinbefore described.

And it is further hereby expressly understood and agreed that in the event that the second party shall fail to comply with and perform all of the covenants, and agreements expressed herein, which said party has agreed to perform, or shall fail to

(Testimony of O. A. Nelson.)

pay unto the first party the royalties herein as said royalties shall become due and payable according to the terms of this lease, then and in that event the said second party shall forfeit all rights under [117] this lease and will peaceably surrender the possession of said property unto the first party.

IN WITNESS WHEREOF the said parties hereto *have*

O. A. NELSON

First Party

N. P. NELSON

Second Party

Signed, sealed and delivered in the presence of  
M. N. CHASE

This is the lease I gave to N. P. Nelson.

(Defendants' Exhibit I  
was offered and admitted, the same being a lease from O. N. Nelson to Charlie Hawkins covering No. 1 Chathenda, whereupon it was stipulated that the same be considered as read.)

This is the lease I gave Charlie Hawkins for the ground.

(Defendants' Exhibit J  
was offered and admitted, the same being a lease from O. A. Nelson to Charlie Hawkins covering Discovery Fraction on Bonanza; whereupon it was stipulated that the same be considered as read.)

This is the lease I gave Charlie Hawkins on Discovery Fraction of Bonanza Creek.

(Testimony of O. A. Nelson.)

(Defendants' Exhibit K

was offered and admitted in evidence, the same being a lease from O. A. Nelson to Harry Sutherland covering Gold Run; whereupon it was stipulated that the same may be considered as read.)

This is the lease I gave Harry Sutherland for claims on Gold Run.

I did personally not take possession on April 11, 1933. After N. P. Nelson received the lease, he went in there. The only property given me personally under the Deed and Bill of Sale was the lubricator; they gave me that when I was in there in July. The James and I had no particular dealings with regard to the [118] property after that date. I had a conversation with the Hirsts on the morning of April 11, 1933. In front of their cabin, I talked mostly with Mrs. Hirst. She told me the James owed them considerable money and she asked me if we were taking over this James property. I told her we were considering it, but I didn't know whether the deal would go through or not. She asked me what possibility there was in collecting their bill. I told her I didn't know, it all depended on what arrangement went through, I told her I would be glad to help her in any way I could, but didn't know what could be done. [119]

(Testimony of O. A. Nelson.)

Upon Cross-Examination:

By counsel for plaintiffs, this witness testified as follows:

Mrs. Hirst asked me as to the possibility of the payment of that bill. I told her I didn't know whether I could do anything or not. I don't recall whether I told her I was acting for the Bank. I told her I would help her if I could. I did not tell her if the Bank accepted the proposition I would pay the bill. She did not hand me this bill. I do not remember her walking into the cabin. She may have. It is highly probable. I do not recall taking a bill from her written on a piece of paper. I do not recall putting it in any note book. I would not want to say Mrs. Hirst was lying. She might be mistaken. I have no opinion in the matter. I wrote a letter to Mr. Ray with reference to my conversation with Mrs. Hirst. I had a conversation with Mr. and Mrs. Hirst at the same time in front of the cabin. I don't remember whether I spoke of the Bank. I don't think he asked me if the Bank was going to pay the indebtedness. He asked me what was said about the deal; he asked me if he would be able to collect what he had coming. I told him it would depend on whether the deal went through. I told him I would do anything I could. I did not say the same thing to Mrs. Hirst in the cabin. I may have had a note book out in the cabin. I can't recall. I usually carry a note book around with me. It is quite possible I had a note book out that day when talking to Mr. and Mrs. James



(Testimony of O. A. Nelson.)

about the transaction. I do not remember putting anything down in the note book. I did not write the proposition down. I went out there in the interests of the Bank of Cordova and the Chitina Cash Store combined. It was agreed by the Bank and the Chitina Cash Store that I was to go out there. Mr. Donohoe represented the Bank and us in that matter, and since that time has represented us. I did not go in there as a Commissioner representing all the parties in this action. I went in as an individual. I wasn't acting in any official capacity. I went to see the James' shortly after I arrived on April 10th, and told them I had come in as requested to make arrangements to settle up their indebtedness. I don't remember telling them I came as trustee for the Bank. [120] The word "trustee" was put into the deed—put into the instrument I took in there by Mr. Donohoe with the idea that when I went in there I would probably take this ground over and hold it on the trust agreement proposed by the Bank. It was Mr. Donohoe that first gave me the idea that there was going to be some trust agreement. Our final agreement was that as far as I was concerned, I would take over the property in final settlement of the mortgage, but I also told them that I would have to take it out and get the approval of the Bank and my partner there as to that arrangement because that arrangement had not been definitely agreed upon. The agreement was not final until it was approved

(Testimony of O. A. Nelson.)

by the Chitina Cash Store and the Bank, but this tentative agreement was that the ground was to be turned over as final settlement for debts owing by the James' to the Chitina Cash Store and to the Bank; also part of the agreement specified I was to give them a lease on a plot of ground on Bonanza Creek 100 by 100 square feet at the mouth of Little Eldorado Creek. There was nothing said about thirty days. I said I would send it back immediately or lease the ground. I said I would send one or the other at the first opportunity. I did not let them know in my letter of April 13th. I wrote the letter of April 13th to get them to confirm my idea of what the proposition was. I knew as far as I was concerned, and I wanted to make sure they understood it just the way I understood it. Their statement written on the bottom of the letter seemed to confirm my statement. The deed was recorded on April 15th.

Q. You got this letter back from the James' in reply to yours—this letter of April 16th—approximately what time, do you recall?

A. I wrote them on the 13th; it is possible the plane went in there and back the next day; I don't remember the exact date.

Q. Did you have any conference about this deed before you put it on record?

A. When I came back from Chisana on the 11th, the date of that deed—I returned on the 11th—either that day or the next morning I called

(Testimony of O. A. Nelson.)

up Mr. Donohoe and told him what the arrangement was I had made and asked him to take it up with Muller and see if they approved [121] it. He said they did.

Q. That would mean on the 12th that he told you that at that time it was all right, was accepted?

A. Yes.

Q. You wrote the James' on the 13th, and they replied to it on the 16th, to find out if this was what they wanted?

A. I don't remember the date.

Q. Well, you show the deed here dated the 16th.

A. Yes.

Q. You don't know when it was received, but you had already accepted the deed in the meantime, and had already recorded it.

A. Yes.

I assume that I sent the James' a copy of the deed. I don't remember that I did. I can say that I did even though I don't remember having done it. It is altogether possible I did. I put N. P. Nelson in possession of the property at the time I made out the lease to him on April 17th.

Q. You had not received this letter of the 16th at that time?

A. When I made that lease I had received James' letter of the 16th of April. I received that at the time the lease was made.

Q. But you just testified the lease was already made then.

(Testimony of O. A. Nelson.)

A. At the time I received the letter, yes.

Q. What is the fact, then?

A. I made the lease out after I received this letter from the James', confirming my opinion of what the agreement was.

Q. So the letter was written to you on the 16th; you received it and you made out the lease on the 17th, and that all took place in that short time? Do you want the Court to understand that?

A. I do. I didn't make that lease out until after I got the letter back because N. P. Nelson wouldn't accept the lease until he knew the ground was in the clear.

On June 23, 1933, I filed a certificate of exemption, known as a notice to hold, with reference to the property involved in this controversy. I signed it individually. It was not signed by me as [122] trustee for the First Bank of Cordova nor as trustee for the Chitina Cash Store.

Q. Now Mr. Nelson, I ask you this question—did you ever write a letter, or have any conversation with Mr. James or Mrs. James that the original proposition to pay the creditors, along with the First Bank of Cordova and the Chitina Cash Store, was or would not be accepted?

A. That letter of April 13th was intended to convey to him the idea that we accepted their proposal to take the property over.

Q. But I am asking you now, if you ever gave them any notice as to what the Bank's action, or

(Testimony of O. A. Nelson.)

your action would be as to whether or not the creditors would be paid, along with the Bank and the Chitina Cash Store?

A. I don't remember ever writing them any letter.

On Re-Direct Examination,

by counsel for defendant, this witness testified as follows:

I never made an agreement that the creditors would be paid, and of course, didn't notify James' that they would be paid. [123]

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WHEREUPON, the Defendants, under Rule 38 offered

THOMAS DONOHOE

as a witness in their behalf, and said Thomas Donohoe testified as follows:

I am an attorney residing in Cordova. During all the negotiations with the James' and the First Bank of Cordova, both in the foreclosure and in this particular deal, I represented the First Bank of Cordova. During this transaction I was not representing the Chitina Cash Store or O. A. Nelson, except incidentally as their affairs might affect the affairs of the First Bank of Cordova. Previous to the foreclosure I told the James' if they would make reasonable efforts to take care of the bills we would try to hold open the foreclosure. I was

(Testimony of Thomas Donohoe.)

instructed by the Bank and the Store to write Mr. James and make an offer to them that if he would put the property in the hands of either the Store or the Bank we would hold it until their indebtedness was paid, and apply all proceeds upon the payment of those two bills. That led up to my writing that letter dated March 3, 1933, introduced as Plaintiffs' Exhibit E. I then prepared the deed and bill of sale, I wrote it myself on the typewriter, the entire instrument. The instrument as returned is in the same condition as it was when I sent it to Mr. Nelson, with the exception of the date inserted and the signatures. It was clipped together by me and returned the same way. Mr. Nelson called me on the phone and submitted to me, on behalf of the Bank, the proposition that the Chitina Cash Store and the First Bank of Cordova turn over to the James' the cancelled notes receipts in full, and a lease to a certain portion, 100 by [124] 100 feet square on the ground. The Bank accepted the proposition and Mr. Nelson came to Cordova, but the Bank would not turn the notes over without something to show; and Nelson was obliged to take up these notes. The Bank accepted the notes of the Chitina Cash Store, and turned the James notes over to Mr. Nelson.



WHEREUPON, Defendants called

N. P. NELSON

as a witness in their behalf and said N. P. Nelson testified as follows:

I have resided at Chisina since April, 1933; previously I resided there from about 1913 to 1916. I am a miner, O. A. Nelson gave me a lease dated April 17, 1933, covering certain property, after which I started prospecting on No. 5 Above Discovery on Bonanza Creek—no, No. 1 on Little Eldorado. I did a lot of dead work in making a right of way for a flume. I saw the James' almost every day while working on No. 5 or No. 1 Little Eldorado. They didn't make any objection to my working this ground. Since prospecting in 1933, I worked the ground the summer of 1934. I occupied Cabin No. 5 and No. 6. I had a conversation with James. He said he had turned over to me one cabin, one at the mouth of Bonanza; he also asked me if they could keep their personal belongings till such time as they could remove them, which I allowed them to do. I have held this property ever since I went there in April and have been mining it ever since. We expended for supplies, merchandise, and so forth \$7,899; freight bill \$2,000, the freight bill on this merchandise, \$2897; I paid out for labor \$5,660. The total is \$16,540. I recovered [125] \$9,000 gold. It is pretty hard to state without prospecting the ground the values the ground contains. The creek has all been worked. I worked on the lower end of No. 6, Bench. I took the water out of No. 9, Bonanza. I got the water right from Don Green.

(Testimony of N. P. Nelson.)

Upon Cross-Examination  
this witness testified as follows:

I did not break the lock off the cabin door in which Mrs. James had her home; I pulled the chain, the fastening chain that pulls the lock, and went in. Some of Mrs. James personal effects were there. I put them outside and covered them up. I don't know how many yards of gravel I handled during the season of 1934. We worked probably about 80 feet above the Creek bench. The gravel averages about 8 feet deep. I had six men working; I used hydraulic method, using No. 2 giant, about 60 feet head. I pulled the water from No. 9 Bonanza about a mile by flume 29 inches wide and 18 inches long. The hydraulic pipe leading from the flume was all the way from 14 to 9 inches. I piped about 40 days, and recovered \$9000 at the present price of gold. The strip I worked out on No. 6 was about 14 feet long and about 6 feet wide and 8 to 10 feet deep. I don't know, I never measured it, but I would guess it would run probably about \$5.00 a yard. I don't know how many claims in James' holdings. Bonanza Creek is about five or six miles long, a steep creek, lot of gravel left up in the benches in some places; Little Eldorado is about two miles long; Gold Run is about two miles long. I was in there in the early days. The beds of the creeks have been pretty well worked out, bench mining is left. There had been no bench

(Testimony of N. P. Nelson.)

mining on No. 6 before [126] I worked it. I worked a strip about 100 by 80 feet, 8 to 10 feet deep, and got \$9,000 in 40 days.

**On Re-Direct Examination**

by counsel for Defendants, this witness testified as follows:

I entered the cabin the latter part of March, 1934. I took out an old burned down stove and heater, a wash board and an old quilt. The bench ground on various streams at Chisana have been prospected. I don't know the values recovered in prospecting.

**On Re-Cross Examination**

by counsel for Plaintiffs, this witness testified as follows:

No one was associated with me in this lease. I didn't have the necessary money to pay for the merchandise and freight. O. A. Nelson is interested with me.

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**WHEREUPON, Defendants called**

**HENRY BOYDEN**

as a witness in their behalf and said Henry Boyden testified as follows:

I am a packer and freighter and guide with big game parties. I have no financial interest in this case or any ground at Chisana. I have known the

(Testimony of Henry Boyden.)

James' since 1913. I am familiar with the country around Chisana. I had a conversation with the James' at Frank Mais' cabin at the mouth of Bonanza Creek between the 14th and 16th of July 1933. Mr. and Mrs. James said they had a deal with the Chitina Cash Store and the Bank and they were taking over the ground. Mrs. James said they were very well satisfied with the deal, Mr. James said the same thing; they said they were leaving the country to go to 40-Mile by way of Dawson, and she had some gold dust and she said she wished to pay [127] some bills, one particularly to Joe Davis. Mr. James said the ground was worthless, it had been worked out, people hanging around there were foolish and starving to death, and the longer they stayed the worse state they would be in. They said N. P. Nelson wouldn't be paid for his time working the ground, that the ground was worked out.

Upon Cross-Examination

by counsel for Plaintiffs, this witness testified:

I do not pack for O. A. Nelson, I pack for Joe Davis, who owns a claim right next to the James' claim.

WHEREUPON, the Defendants called

BURT J. DAVIS

as a witness in their behalf, and said Burt J. Davis testified as follows:

I reside at Chisana, Alaska. I am a placer miner. I have no interest in this case. I had a conversation with the James in front of the cabin No. 6, Bonanza last of April 1933. I asked them "how about my bill?" They said, "we want to pay you and Frank Mais and some other little bills we owe around town." I had a conversation with them September 28, 1933, at James Cabin on No. 6. I told them I came down and was sent by N. P. Nelson to set the pipe line up safe where there is no ice. He said, "All right, I'll give you a hand." Mrs. James said "I am going to get back that deed." I said "you will have a hell of a time." N. P. Nelson took possession about April 11, 1933. He was prospecting on No. 5 and the lower end of No. 6 on Bonanza. Since then, he worked there last summer. [128]

Q. Do you know if Mr. Hawkins and Mr. McMahon have some ground in there?

A. They have been trying it; they didn't get nothing. Charlie Hawkins came up and worked for me the balance of the summer.

I am familiar with the ground embraced on Little Eldorado and other creeks around there. I have lived in Chisana since April 1915. I own some claims there on Little Eldorado. Mrs. James said

(Testimony of Burt J. Davis.)

she would pay me. The James' haven't paid me my bill of \$25.00 yet. It was an account due on the Simonds estate, for which I was acting as agent.

#### Upon Cross-Examination

by counsel for Plaintiffs, this witness testified as follows:

I had a conversation with Mrs. James out at the airplane landing in the Fall of 1933. Mrs. James did not tell me I would have to look to the Bank, when I asked her when she was going to pay that Simonds bill. She said "Bill is leaving for Valdez." She told me she was going to see a lawyer, that the Bank was supposed to pay the bill; that is the only conversation I ever had with her.

THEREUPON, the Defendants closed their case.

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The foregoing was all the evidence introduced on the trial of said cause. Whereupon counsel for the respective parties presented their closing arguments to the Judge. [129]

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[Title of Court and Cause.]

#### STIPULATION AS TO STATEMENT OF EVIDENCE.

It appearing that Plaintiffs-Appellants lodged with the Clerk of the above entitled Court on November 23rd, 1935, a condensed statement of evi-



dence pursuant to Equity Rule No. 75 (b), and that the Attorney for the Defendants-Appellees was given due notice thereof, made objection thereto; whereupon, said condensed statement of the evidence has been re-drafted and prepared by counsel; now on the 29th day of January, 1936, it is stipulated and agreed by counsel for all the parties to this action that said re-written condensed statement may be settled without further notice and approved, and do hereby waive notice, and consent to the immediate hearing on said statement.

L. V. RAY

Of Attorneys for  
Plaintiffs-Appellants.

THOMAS M. DONOHUE

Attorney for  
Defendants-Appellees.

[Endorsed]: Filed Jan. 28, 1936. [130]

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[Title of Court and Cause.]

ORDER APPROVING CONDENSED STATE-  
MENT OF EVIDENCE.

It appearing that the within and foregoing condensed statement of the evidence was lodged in the office of the Clerk of the Court by the Plaintiffs-Appellants, in this cause, for the examination of the other parties, in said cause, on the 23rd day of November, 1935, being in due time, and that notice

of such lodgment, and of the intention of the Plaintiffs-Appellants, at this time and place to ask the undersigned, the Judge of this Court, to approve said condensed statement of evidence, having been given the attorney for said Defendants-Appellees, more than ten days prior to this time, and it appearing that subsequently said condensed statement of the evidence has been re-drafted and prepared by counsel, as now submitted to the Judge of this Court, on the 29th day of January, 1936, in due time; and it appearing that counsel have stipulated that such Statement of Evidence may be settled and approved, without further notice; and it further appearing that the foregoing narrative of the evidence contains all of the evidence and all of the exhibits stated in simple and condensed form that were introduced, heard or considered by the Court in render- [131] ing its decree in the above cause, and that as to such portion of the foregoing narrative as is set forth in the form of questions and answers such form is necessary to accurately reflect what occurred; now therefore, it is,

**ORDERED**, that the foregoing statement and narrative of the evidence be, and the same is hereby, settled, allowed and approved as a full, true and correct statement in simple and condensed form, of all the evidence introduced in connection with all the proceedings and motions in the above cause and contains all the evidence material to the hearing of the appeal in said cause and the matters

stated in full in the form of questions and answers are directed to be so set forth.

WITNESS the hand and seal of this Court this 29th day of January, 1936.

SIMON HELLENTHAL

District Judge.

Entered Court Journal No. C-4. Page No. 453,  
Jan. 28, 1936.

[Endorsed]: Filed Jan. 28, 1936. [132]

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I.

That thereafter and before Decree was rendered in said cause the Plaintiffs did submit to the Court this proposed Findings *and* Fact and Conclusions of Law, which the Court refused to give or adopt and to such refusal did allow Plaintiffs an exception thereto, said proposed Findings of Fact and Conclusions of Law are as follows:

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW.

BE IT REMEMBERED that on the 14th day of February, 1935, the above entitled cause came on regularly for hearing before the HON. SIMON HELLENTHAL, Judge of the District Court for the Territory of Alaska, Third Division, sitting as

a Court in Equity at Cordova, Alaska, Third Division, upon the Complaint of Plaintiffs as amended, and the Cross-Complaint and Affirmative Defense of the Defendants appearing separately, and the Reply of Plaintiffs thereto, the Plaintiffs appearing in person and through their attorneys of record, L. V. RAY and LADY WILLIE FORBUS, and the [133] Defendants O. A. Nelson and N. P. Nelson appearing in person and through their attorneys of record, DONOHUE & DONOHUE, the Defendants, CHARLES HAWKINS and CHARLES McMAHAN, not appearing; whereupon the Court proceeded with the hearing; and the Plaintiffs having introduced testimony in their behalf said cause was continued to February 15, 1935; whereupon the Plaintiffs introduced further testimony in their behalf and rested; thereupon the defendants, O. A. NELSON and N. P. NELSON, introduced testimony in their behalf and rested; and the Court having read and considered the pleadings and exhibits therein, and having heard the argument of respective counsel, and being further fully advised in the premises, now, therefore, makes the following

#### FINDINGS OF FACT:

FIRST: That on and prior to the 4th day of February 1930, the Plaintiff W. E. James, by right of discovery and location, was the owner of and entitled to the immediate possession of certain placer mining ground and claims, held by the per-

formance of annual labor, subject to the paramount title of the United States of America, to wit:

Discovery on Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

No. 5 Above Discovery on Bonanza Creek

No. 6 Above Discovery on Bonanza Creek

No. 14 Above Discovery on Bonanza Creek

No. 15 Above Discovery on Bonanza Creek

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza  
Creek

Discovery on Gold Run Creek

Discovery Annex on Gold Run Creek

No. 1 Cathenda Creek

No. 1 Little Eldorado Creek

No. 3 Little Eldorado Creek

No. 1 Fraction on Little Eldorado Creek

Discovery Bench on Little Eldorado Creek

No. 1 Discovery Bench on Little Eldorado  
Creek

No. 2 Discovery Bench on Little Eldorado  
Creek

No. 3 Discovery Bench on Little Eldorado  
Creek

No. 1 Gold Bug Bench on Little Eldorado  
Creek [134]

No. 2 Gold Bug Bench on Little Eldorado  
Creek

No. 3 Gold Bug Bench on Little Eldorado  
Creek

James Bench on Little Eldorado Creek

the notices of which are all of record in the office of the Recorder for Chisana Recording Precinct, at Chisana, Alaska; and also certain personal property described as a sawmill and cabin located near the Postoffice of the Town of Chisana, Alaska, and one large cabin located in the Town of Chisana, Alaska, known as the James Cabin.

SECOND: That on the 5th day of February, 1930, the Plaintiffs made, executed and delivered to the First Bank of Cordova, a banking corporation organized and existing under the Laws of the Territory of Alaska, a certain mortgage as security for the payment of Five Thousand One Hundred Fifty (\$5,150.00) Dollars, in lawful money of the United States, together with interest thereon at the rate of twelve (12) per cent per annum, according to the terms and conditions of four (4) certain promissory notes due one year after date made by the Plaintiffs, payable to the First Bank of Cordova, as more fully appears from the original mortgage, recorded on September 30, 1932, in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, a certified copy of which is attached to the complaint herein.

THIRD: That during all the times herein mentioned the Defendant, O. A. Nelson, was and is the owner of the Chitina Cash Store of Chitina, Alaska; and that at the time the Plain- [135] tiffs executed the aforesaid notes, said Chitina Cash Store became



the indorser upon certain of the notes given by the Plaintiffs to said First Bank of Cordova in the total amount of Two Thousand Eight Hundred Fifty (\$2,850.00) Dollars.

That, in addition thereto, and prior to April 11th, 1933, the Plaintiffs became indebted to the Chitina Cash Store in the further sum of Five Hundred Thirty-two (\$532.00) Dollars, upon an open account.

That during the year 1933, and subsequent to the 11th day of April, 1933, the First Bank of Cordova assigned to the Defendant, O. A. Nelson, all their right, title and interest in and to the aforesaid mortgage and the notes given to secure the same, and that the said O. A. Nelson is now the owner and holder of said mortgage and notes.

That the total indebtedness due and owing by the Plaintiffs to the Defendant, O. A. Nelson, growing out of all the transactions between the parties mentioned in this and the preceding paragraph, is the sum of Eight Thousand One Hundred Twenty-two and 64/100 (\$8,122.64) Dollars.

FOURTH: That during the month of January, 1932, the First Bank of Cordova instituted suit against the Plaintiffs for the foreclosure of the mortgage above mentioned, which said action was pending in the District Court for the Territory of Alaska, Third Division, at the time of the institution of the within cause, but which said action was dismissed prior to the hearing hereof.

FIFTH: That on or about the 11th day of April, 1933, the Defendant, O. A. Nelson, at the

instance and request of the Plaintiffs in this action, came to Chisana, Alaska, the home of the Plaintiffs, representing the First Bank of Cordova, [136] for the purpose of consummating a plan whereby the indebtedness of the Plaintiffs to the First Bank of Cordova and the Chitina Cash Store might be paid. That pursuant thereto, the Defendant, O. A. Nelson, submitted a proposition to Plaintiffs whereby the Plaintiffs were to convey to him as Trustee for the First Bank of Cordova all of the above described property and mining claims of Plaintiffs, in consideration of which the said Bank would operate Plaintiffs' mining claims, and from the proceeds thereof would pay off the indebtedness to the Bank and to the Chitina Cash Store, the trust thus created to be terminated at the end of five years.

That the Plaintiffs refused to accept said proposition, and offered a counter-proposition to the Bank whereby they would convey outright to the Defendant, O. A. Nelson, as Trustee for the First Bank of Cordova, the aforesaid mining claims, in consideration of which the said Bank would pay off the Plaintiffs' entire indebtednesses to all of their creditors, including the First Bank of Cordova and the Chitina Cash Store; and in pursuance thereof, Plaintiffs then and there furnished to said Defendant, O. A. Nelson, a list of all their other creditors.

That in continuation of their negotiations, the Plaintiffs executed a Deed and Bill of Sale to the

Defendant, O. A. Nelson, as Trustee, which said instrument they believed and understood was a Deed only and was given to O. A. Nelson as Trustee for the First Bank of Cordova. That said instrument was signed by Plaintiffs in the presence of one witness, one Luella Johnston, and without the presence of one C. H. Gillam, both of whom subscribed their names as witnesses to [137] the same. That said instrument was not acknowledged. That it was recorded on April 15, 1933, in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, the Defendant, as Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, a certified copy of which is attached to the complaint in this action.

That said instrument was executed and delivered to Defendant, O. A. Nelson, upon the express condition that if the First Bank of Cordova would not accept the counter-proposition made by Plaintiffs, the same was to be returned to them by next mail, or in thirty days' time.

SIXTH: That the dealings between the parties were never consummated, in that at no time thereafter was the proposition of the First Bank of Cordova accepted by the Plaintiffs, nor the counter-proposition of the Plaintiffs accepted by the First Bank of Cordova; that there was never a meeting of minds between the parties; and that said deed never became effective or valid.

SEVENTH: That the said Defendant, O. A. Nelson, has at all times refused to return the trust

deed to the Plaintiffs; that he immediately after obtaining possession of the deed unlawfully and fraudulently converted said property and mining claims described in said deed to himself, and has at all times since the 11th day of April, 1933, exercised full control, ownership and dominion over the property described in said deed.

EIGHTH: That on or about the 17th day of April, 1933, the said Defendant, O. A. Nelson, gave a purported lease of certain mining claims and property described in the trust deed to one [138] N. P. Nelson, as follows:

All of the Bench Ground lying opposite No. 1 on Little Eldorado, Little Eldorado Creek, and extending up to No. 8 on Bonanza Creek.

No. 5 Above Discovery on Bonanza Creek, 1320 feet by 660 feet, more or less.

No. 5 Fraction Above Discovery on Bonanza Creek, 78 feet by 660 feet, more or less.

No. 6 Above Discovery on Bonanza Creek, 1320 feet by 660 feet, more or less.

No. 1 on Little Eldorado Creek, 1320 feet by 660 feet, more or less.

No. 1 Fraction on Little Eldorado Creek, 81 feet by 660 feet, more or less.

No. 1 Discovery Bench on Little Eldorado Creek, 1320 feet by 660 feet, more or less.

No. 2 Discovery Bench on Little Eldorado Creek, 1320 feet by 660 feet.

No. 3 Discovery Bench on Little Eldorado Creek, 1320 feet by 660 feet, more or less

and also

the pipe, tools, and equipment now on Bonanza Creek and formerly in the possession and belonging to W. E. James, and also the use of the Sawmill located at Chisana.

That by the terms of said lease the Defendant, O. A. Nelson, as lessor, was to receive ten (10) per cent of the gross recoveries of gold from the operations upon said mining ground; that the period of the lease was from April 17th, 1933, to October 1st, 1942.

That said purported lease was not acknowledged; that it was signed in the presence of.....

That said purported lease was recorded on .....in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska.

That the Plaintiffs never authorized the execution and delivery of said purported lease, had no notice of the same, [139] and never ratified it; and that prior to the time when the Defendant, N. P. NELSON, took possession of the property under said purported lease, the Plaintiffs had notices posted upon the property covered by the purported lease and upon their cabins and the sawmill located thereon declaring their ownership in said property and warning trespassers to keep off.

That said lease is invalid and ineffective for the reason that the said O. A. NELSON, Defendant



herein, acquired no title under the trust deed heretofore mentioned, and, therefore, had no right to make a conveyance thereunder; and for the further reason that said trust deed was not acknowledged in accordance with the provisions of the laws of the Territory of Alaska, and was therefore, not entitled to record, and constituted no notice to the Defendant, N. P. NELSON, of title in the said O. A. NELSON; and for the further reason that said purported lease was never executed, witnessed, or acknowledged in accordance with the provisions of the laws of the Territory of Alaska relating thereto. That said purported lease constitutes a cloud upon the title of Plaintiffs' property.

NINTH: That on or about the 3rd day of June, 1933, the Defendant, O. A. NELSON, gave a purported lease to the Defendant, Charles Hawkins, to expire October 1st, 1937, upon the following described property;

No. 1 on Cathenda Creek

Discovery on Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and that thereafter said Defendant gave a purported lease to said Charles Hawkins, bearing date February 19th, 1934, to expire October 1st, [140] 1937, upon the following described property:

Discovery Fraction on Bonanza Creek



in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska.

That the Defendant, CHARLES HAWKINS, has surrendered said purported leases and disclaims no further interest therein and that he has abandoned the property described in same.

That the Plaintiffs never authorized the execution and delivery of the purported leases to the Defendant, CHARLES HAWKINS, had no notice of the same, and never ratified them; and that prior to the time when said Defendant took possession of the property described in said purported leases, the Plaintiffs had notices posted upon the property covered thereby and upon their cabins located thereon declaring their ownership in said property and warning trespassers to keep off.

That said leases are invalid and ineffective for the reason that the said O. A. NELSON, Defendant herein, acquired no title under the trust deed heretofore mentioned, and, therefore, had no right to make a conveyance thereunder; and for the further reason that said trust deed was not acknowledged in accordance with the provisions of the laws of the Territory of Alaska, and was, therefore, not entitled to record, and constituted no record notice to the Defendant, CHARLES HAWKINS, of title in the said O. A. NELSON; and for the further reason that said leases were never executed, witnessed or acknowledged in accordance with the provisions of the laws of the Territory of Alaska

relating thereto. That said purported leases con-[141] stitute a cloud upon the title of Plaintiffs' property.

To all of which Findings the Defendants, and each of them, except, and their exceptions are hereby allowed.

DONE in Open Court this.....day of February, 1935.

.....  
Judge.

AND from the foregoing Findings of Fact, the Court makes the follownig

#### CONCLUSIONS OF LAW:

FIRST: That the Plaintiffs are entitled to a decree cancelling and setting aside the aforesaid Deed and Bill of Sale executed by the Plaintiffs, W. E. James and Agnes James, husband and wife, to the Defendant, O. A. Nelson, as Trustee, bearing date April 11th, 1933, recorded on April 15, 1933, in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson, as Commissioner and Ex-Officio Recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska.

SECOND: That the Plaintiffs are entitled to a decree cancelling and setting aside the aforesaid Lease made, executed and delivered by O. A. NELSON, as Lessor, to N. P. NELSON, as Lessee, bearing date April 17, 1933, expiring October 1, 1942, covering certain mining claims and property included within the Deed and Bill of Sale mentioned in Paragraph FIRST just above related.

THIRD: That the Plaintiffs are entitled to a decree cancelling and setting aside the aforesaid Lease made, executed [142] and delivered by O. A. NELSON, as Lessor, to CHARLES HAWKINS, as Lessee, bearing date June 3, 1933, to expire October 1st, 1937, covering certain mining claims and property included in the Deed and Bill of Sale mentioned in paragraph FIRST just above related.

FOURTH: That the Plaintiffs are entitled to a decree cancelling and setting aside the aforesaid Lease made, executed and delivered by O. A. NELSON, as Lessor, to CHARLES HAWKINS, as Lessee, bearing date February 19th, 1934, to expire October 1st, 1937, covering certain mining claims and property included in the Deed and Bill of Sale mentioned in Paragraph FIRST above related.

FIFTH: That the Plaintiffs are entitled to a decree cancelling and setting aside the aforesaid Lease made, executed and delivered by O. A. NELSON, as Lessor, to CHARLES McMAHAN as Lessee, which said lease was surrendered on or about the 1st day of July, 1934, and in which the Defendant, Charles McMahan, claims no further interest therein.

SIXTH: That the Plaintiffs are entitled to their costs to be taxes herein, and to attorneys' fees in the sum of \$.....

To all of which the Defendants, and each of them, excepts and their exceptions are allowed.

DONE in Open Court this.....day of February, 1935.

.....  
Judge

To this refusal to find as set forth in the above and to the refusal to sign the above, the Plaintiffs except and an exception allowed March 13, 1935.

SIMON HELLENTHAL

District Judge

Presented by

LADY WILLIE FORBUS

Copy received this 12th day of February 1935.

DONOHOE & DONOHOE

Attorneys for Defendants

[Endorsed]: Filed March 13, 1935. [143]

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## II.

That subsequently and on March 13th, 1935, the Court did make, file and enter its Findings of Fact and Conclusions of Law and Decree based thereon, to all of which Plaintiffs excepted and which exceptions were by the Court allowed, the same being as follows:

[Title of Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing the fourteenth day of February, 1935, before Simon Hellenenthal, Judge of the District Court for the Territory of Alaska, Third Division, sitting in Equity at Cor-

dova, Alaska, upon the complaint of the plaintiffs as amended; the separate answers of the defendants; the cross complaint of O. A. Nelson, the counter claims of N. P. Nelson and Charles Hawkins, and the replies of the plaintiffs, the plaintiffs appearing in person and by their attorneys L. V. Ray, Esquire, and Lady Willie Forbus, and the defendants O. A. Nelson and N. P. Nelson appearing in person and by their attorney, Thomas M. Donohoe, Esquire; and the defendants Charles Hawkins and Charles McMahan appearing [144] by their attorney Thomas M. Donohoe, Esquire, whereupon the plaintiffs introduced their testimony in chief, the defendants introduced their testimony, and the plaintiffs having introduced their testimony in rebuttal, and all the parties having introduced all of their testimony and having rested, and respective counsel having addressed the court, and the court being fully advised, finds:

### I.

That the plaintiffs by right of discovery and location and by performance of annual labor, subject to the paramount title of the United States of America and the mortgage hereinafter referred to, are the owners, and entitled to the immediate possession, except certain rights given to the defendant N. P. Nelson by virtue of a lease hereinafter set forth, of the following described placer mining claims to-wit:

Those certain placer mining claims, situated upon Bonanza Creek, a tributary of Cathenda

Creek, on Gold Run Creek, a tributary of Glacier Creek; on Cathenda Creek and on Little Eldorado Creek, a tributary of Bonanza Creek; all of said claims being in the White River Mining District of the Chisana Recording District, Territory of Alaska, and known and called as follows, to-wit:

Discovery of Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

No. 5 Above Discovery on Bonanza Creek

No. 6 Above Discovery on Bonanza Creek

No. 14 Above Discovery on Bonanza Creek

No. 15 Above Discovery on Bonanza Creek

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza Creek

Discovery on Gold Run Creek

Discovery Annex on Gold Run Creek

No. 1 Cathenda Creek

No. 1 Little Eldorado Creek

No. 3 Little Eldorado Creek

No. 1 Fraction Little Eldorado Creek

No. 1 Gold Bug Bench on Little Eldorado Creek

No. 2 Gold Bug Bench on Little Eldorado Creek

No. 3 Gold Bug Bench on Little Eldorado Creek

James Bench on Little Eldorado Creek

the notices of which are all of record in the office of the [145] Recorder for Chisana Re-



ording Precinct, at Chisana, Alaska, to which records reference is hereby made for a further and more complete description of said claims, and to saw mill and cabin located near the Post Office of the town of Chisana, Alaska, and to one large cabin located in the town of Chisana, Alaska, and known as the James cabin.

## II.

That on the fifth day of February, 1930, the plaintiffs herein made and executed a mortgage on the claims hereinbefore referred to, to the First Bank of Cordova, as security for the payment of certain sums which were then due the First Bank of Cordova, as evidenced by certain promissory notes.

## III.

That the plaintiffs, in addition to the amount they owed the First Bank of Cordova, also owed and were indebted to the Chitina Cash Store owned in part by O. A. Nelson. That on the 11th day of April, 1933, negotiations were entered into between O. A. Nelson on behalf of himself, the First Bank of Cordova, and the Chitina Cash Store, and the plaintiffs under which the said O. A. Nelson was to take title to the plaintiffs' property, in consideration of cancelling the debt due the First Bank of Cordova and the Chitina Cash Store, it not being definitely determined whether certain other obligations of the plaintiffs were also to be paid as part of the consideration for said deed, at which time the plaintiffs made, executed and delivered that certain

paper writing, a copy of which is attached to the complaint, called "Deed and Bill of Sale", Exhibit B, purporting to be an indenture made the 11th day of April 1933, between the plaintiffs as first parties, and O. A. Nelson, Trustee, second party, conveying all of the afore- [146] mentioned mining property of the plaintiffs, and also a saw mill and cabin located near the Post Office in the town of Chisana, Alaska, and one large cabin located in the town of Chisana and known as the James cabin, together with all houses, buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned property, or any of them, or in any manner connected therewith, to the said O. A. Nelson, Trustee, one of the defendants herein, which is in words and figures as follows:

### DEED AND BILL OF SALE

"THIS INDENTURE, Made this 11st day of April, 1933, between W. E. JAMES and AGNES JAMES husband and wife, of Chisana, Alaska, the parties of the first part, and O. A. NELSON, Trustee, of Chitina, Alaska, the party of the second part, WITNESSETH:

"The said parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration by them received, do by these presents Grant, Bargain, Sell, Convey and Confirm unto the said party of the second part, and to his heirs and assigns, the following described property:

"Placer Mining Claims: Discovery on Bonanza Creek; No. 1 Above Discovery on Bonanza

Creek, No. 5 Above Discovery on Bonanza Creek, No. 6 Above Discovery on Bonanza Creek, No. 14 Above Discovery on Bonanza Creek, No. 15 Above Discovery on Bonanza Creek, Discovery Fraction on Bonanza Creek, No. 5 Fraction Above Discovery on Bonanza Creek, Discovery on Gold Run Creek, Discovery Annex on Gold Run Creek, No. 1 *Chathenda* Creek, No. 1 Little Eldorado Creek, No. 3 Little Eldorado Creek, Discovery Bench on Little Eldorado Creek, No. 1 Discovery Bench on Little Eldorado Creek, No. 2 Discovery Bench on Little Eldorado Creek, No. 3 Discovery Bench on Little Eldorado Creek, No. 1 Fraction on Little Eldorado Creek, No. 1 Gold Bug Bench on Little Eldorado Creek, No. 2 Gold Bug Bench on Little Eldorado Creek, No. 3 Gold Bug Bench on Little Eldorado Creek, and James' Bench on Little Eldorado Creek; all situated on Gold Run and Bonanza Creeks and tributaries, [147] in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska; and also together with a sawmill and cabin located near the post office in the town of Chisana, Alaska, and one large cabin located in the town of Chisana and known as the James cabin; and also together with all houses, buildings, pipe, giants, flumes, tools, machinery and equipment of every kind and nature upon the said mentioned properties, or any of them, or in any manner connected therewith.

To have and to hold the same, together with the dips, angles, spurs, ores, minerals, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, forever.

“The said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, executors and administrators, all and singular, the premises hereinabove conveyed, described and granted, or mentioned, with the appurtenances, unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will Warrant and forever Defend.

“IN WITNESS WHEREOF, the said Parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal]

W. E. JAMES

[Seal]

AGNES JAMES

Signed, Sealed and Delivered in the Presence of:  
LUELLE JOHNSTON  
C. H. GILLAM”

#### IV.

That thereafter the plaintiffs, W. E. James and Agnes James told and informed the defendant, N. P. Nelson that they had made, executed and delivered the deed above mentioned to the defendant O. A. Nelson. [148]

V.

Thereafter and on the 17th day of April, 1933, the defendant, O. A. Nelson, with the full knowledge of the plaintiffs herein, made, executed and delivered to the defendant N. P. Nelson, a lease, or lay, covering the following described mining claims:

No. 5 Above Discovery on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza  
Creek

No. 6 Above Discovery on Bonanza Creek

No. 1 and No. 1 Fraction on Little Eldorado  
Creek

Nos. 1, 2 and 3 Discovery Bench on Little  
Eldorado Creek,

all being placer mining claims on Bonanza Creek and tributaries in the White River Mining District of the Chitina Recording Precinct, Third Division, Territory of Alaska which said lease, or lay, is in words and figures as follows, to-wit:

LEASE

“THIS AGREEMENT, made and entered into this 17th day of April, 1933, by and between O. A. Nelson, first party and N. P. Nelson, second party, WITNESSETH:

“That the first party for and in consideration of the sum of One (\$1.00) Dollar and other good and valuable considerations to him in hand paid by the second party, the receipt whereof is hereby acknowledged and of the rents, conditions and covenants to be paid and performed by the second party as here-

inafter set forth does hereby lease and remise to the second party, upon the terms hereinafter expressed, the following described placer mining ground situated in the White River Mining District, Territory of Alaska and more particularly described as follows, to-wit: [149]

“All of the bench ground lying opposite No. One on Little Eldorado Creek and extending up to No. 8 on Bonanza Creek.

“No. Five Above Discovery on Bonanza Creek, 1320x660 feet, more or less,

“No. Five Fraction Above Discovery on Bonanza Creek 78x660 feet, more or less,

“No. Six Above Discovery on Bonanza Creek 1320x660 Feet, more or less,

“No. One on Little Eldorado Creek, 1320x660 feet, more or less,

“No. One Fraction on Little Eldorado Creek 81x660 feet, more or less,

“No. One Discovery Bench on Little Eldorado Creek 1320x660 feet, more or less,

“No. Two Discovery Bench on Little Eldorado Creek 1320x660 Feet.

“No. Three Discovery Bench on Little Eldorado Creek 1320x660 feet, more or less

for a term to expire on the first day of October, 1942, nineteen hundred forty , unless sooner terminated by a failure to do and perform the terms, covenants and conditions of this agreement; and the second party agrees that he will enter into possession of said hereinbefore described properties



and will during the said period work, mine and prospect parts and portions thereof, and said mining operations shall be carried on by him in a workman and minerlike fashion, and in a manner having in view the preservation of the said claims as workable mines; and [150] that from the gold extracted from said property he will pay to the said first party as royalty ten (10%) per cent of the gross amount of gold

——“Provided also that the said lessee N. P. Nelson shall have the use of the pipe, tools and equipment now on Bonanza Creek and formerly in the possession and belonging to W. E. James, and also the use of the saw mill located at Chisana insofar as the said saw mill may be owned by, in the possession of, or controlled by the said Lessor.”——mined and extracted by him from said claims, which said royalty shall be paid to the first party immediately after each cleanup; that the first party hereby reserves the right to be present at each and every cleanup, either in person or by a representative, and also the right to pan the ground for the purpose of determining the values of gold contained in said ground.

“The second party agrees that he will not allow any valid lien or encumbrance to be created against said property for work or labor done in mining or development of said property, or for goods, wares or material used in mining or development of the same; That the second party shall not sub-let, without the consent of the first party in writing,

any part or portion of the property hereinbefore described.

“And it is further hereby expressly understood and agreed that in the event that the second party shall fail to comply with and perform all of the covenants, and agreements expressed herein, which said party has agreed to perform, or shall fail to pay unto the first party the royal- [151] ties herein as said royalties shall become due and payable according to the terms of this lease, then and in that event the said second party shall forfeit all rights under this lease and will peaceably surrender the possession of said property unto the first party.

“IN WITNESS WHEREOF the said parties hereto have hereunto set their hands this 17th day of April, 1933.

O. A. NELSON

First Party

N. P. NELSON

Second Party

Signed, sealed and delivered in the presence of  
M. N. CHASE

## VI.

That thereupon the defendant N. P. Nelson entered into possession of the mining claims above described with the full knowledge and consent of the plaintiffs herein, and spent large amounts of money in bringing water to said claims and developing said claims, and ever since said date has been and now is in lawful and peaceful possession thereof.

## VII.

That on the 30th day of June, 1933, the defendant O. A. Nelson, acting for himself and associates, notified the plaintiff W. E. James that he would not at that time be able to go on with the proposition in connection with which the deed had been given, and left the matter open for further negotiations; that the terms of this agreement in connection with which said deed was given were never fully agreed upon between the parties, and later in the Fall of 1933 the arrangement was definitely rejected by the plaintiffs. [152]

## VIII.

That on the third day of June, 1933, the defendant O. A. Nelson made a lease covering part of the property herein described, to Charles Hawkins, and the defendant O. A. Nelson made a further lease to the said Charles Hawkins on February 19, 1934, also covering part of the property herein described; that the defendant Charles Hawkins has wholly failed to enter into possession of said property or to make any improvement on said property.

## IX.

That the defendant O. A. Nelson made and executed a lease to Charles McMahan covering part of the property herein described, which lease was made on or about the seventeenth day of December, 1933; that the defendant Charles McMahan never entered into possession of said property, made no improvements thereon, and has surrendered said lease.

And from the foregoing, the court concludes as a

matter of law that a decree should be entered adjudging:

1. That the plaintiffs are the owners, subject to the paramount title of the United States of America, and the mortgage herein referred to, and are entitled to the immediate possession except certain rights given to the defendant, N. P. Nelson, of the following described placer mining claims, to-wit:

Those certain placer mining claims, situated upon Bonanza Creek, a tributary of Cathenda Creek, on Gold Run Creek, a tributary of Glacier Creek; on Cathenda Creek and on Little Eldorado Creek, a tributary of Bonanza Creek; all of said claims being in the White River Mining District of the Chisana Recording District, Territory of Alaska, and known and called as follows, to-wit: [153]

Discovery of Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

No. 5 Above Discovery on Bonanza Creek

No. 6 Above Discovery on Bonanza Creek

No. 14 Above Discovery on Bonanza Creek

No. 15 Above Discovery on Bonanza Creek

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza Creek

Discovery on Gold Run Creek

Discovery Annex on Gold Run Creek

No. 1 Cathenda Creek

No. 1 Little Eldorado Creek

No. 3 Little Eldorado Creek

No. 1 Fraction Little Eldorado Creek

No. 1 Gold Bug Bench on Little Eldorado  
Creek

No. 2 Gold Bug Bench on Little Eldorado  
Creek

No. 3 Gold Bug Bench on Little Eldorado  
Creek

James Bench on Little Eldorado Creek

the notices of which are all of record in the office of the Recorder for Chisana Recording Precinct, at Chisana, Alaska, to which records reference is hereby made for a further and more complete description of said claims, and to saw mill and cabin located near the Post Office of the Town of Chisana, Alaska, and to one large cabin located in the town of Chisana, Alaska, and known as the James cabin.

2. That the deed of the plaintiffs executed on the 11th day of April, 1933, to O. A. Nelson, Trustee should be set aside and held of no further effect, which deed is hereinbefore set forth.

3. That the defendant, O. A. Nelson, acted as trustee and agent for the plaintiffs in making the lease with N. P. Nelson, which lease has been set forth in full in these findings, and that the plaintiffs are estopped from denying the validity of said lease, except as to the first parcel described in said lease as "all of the bench ground lying opposite No. 1 on Little Eldorado Creek, and extending up to No. 8 on Bonanza Creek," said parcel not having

been included in the counter claim of the defendant, N. P. Nelson.

4. That said lease remain in force and effect except as to the parcel above mentioned, the same as though [154] it had been executed by the plaintiffs, and that all rights and privileges accruing under said lease to the said O. A. Nelson accrue to and be exercised by the plaintiffs the same as though said lease were made by the plaintiffs instead of the said O. A. Nelson.

5. That the leases given to Charles Hawkins be cancelled and are of no further force and effect.

6. That the lease given to Charles McMahan has been surrendered and is of no further force and effect.

7. That neither plaintiffs nor any of the defendants recover costs, attorneys fees, or disbursements.

To the foregoing findings and conclusions and to each and every one of the same the plaintiffs and the defendant O. A. Nelson except, and exceptions are allowed the plaintiffs and said O. A. Nelson.

Dated at Valdez, Alaska, this 13 day of March, 1935.

SIMON HELLENTHAL

District Judge

Entered Court Journal No. V 17 Page No. 694.  
March 13, 1935.

[Enodrds]: Filed March 13, 1935. [155]



[Title of Court and Cause.]

DECREE.

This matter having come on for hearing the fourteenth day of February, 1935, before Simon Hellenenthal, Judge of the District Court for the Territory of Alaska, Third Division, sitting in Equity at Cordova, Alaska, and the court having made findings of fact and conclusions of law which are hereby referred to and made a part hereof, and being fully advised, *it is*

IT IS ORDERED AND DECREED:

1. That the plaintiffs are the owners, subject to the paramount title of the United States of America, and the mortgage herein referred to, and are entitled to the immediate possession except certain rights given to the defendant N. P. Nelson, of the following described placer mining claims, to-wit:

Those certain placer mining claims, situated upon Bonanza Creek, a tributary of Cathenda Creek; on Gold Run Creek, a tributary of Glacier Creek; on Cathenda Creek and on Little Eldorado Creek, a tributary of Bonanza Creek; all of said claims being in the White River Mining District of the Chisana Recording District, Territory of Alaska, and known and called as follows, to-wit:

Discovery of Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

No. 5 Above Discovery on Bonanza Creek

No. 6 Above Discovery on Bonanza Creek

No. 14 Above Discovery on Bonanza Creek

No. 15 Above Discovery on Bonanza Creek  
[156]

Discovery Fraction on Bonanza Creek

No. 5 Fraction Above Discovery on Bonanza Creek

Discovery on Gold Run Creek

Discovery Annex on Gold Run Creek

No. 1 Cathenda Creek

No. 1 Little Eldorado Creek

No. 3 Little Eldorado Creek

No. 1 Fraction Little Eldorado Creek

No. 1 Gold Bug Bench on Little Eldorado Creek

No. 2 Gold Bug Bench on Little Eldorado Creek

No. 3 Gold Bug Bench on Little Eldorado Creek

James Bench on Little Eldorado Creek

the notices of which are all of record in the office of the Recorder for Chisana Recording Precinct, at Chisana, Alaska, to which records reference is hereby made for a further and more complete description of said claims, and to saw mill and cabin located near the Post Office of the town of Chisana, Alaska, and to one large cabin located in the town of Chisana, Alaska, and known as the James Cabin.

and the title to said property and the mining claims be and the same is hereby quieted in the plaintiffs *W. F. James and Agnes James* against

the defendants, except as to the mortgage and lease referred to in the findings herein.

2. That that certain Deed and Bill of Sale executed by W. E. James and Agnes James, husband and wife, to the defendant O. A. Nelson, as trustee, bearing date of April 11, 1933, recorded on April 15, 1933, in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson as commissioner and ex-officio recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, be and the same is hereby set aside, annulled and cancelled and declared to be of no further force and effect, which said deed is set forth in full in the findings of fact herein.

3. That the defendant O. A. Nelson acted as trustee for the plaintiffs in making the lease with N. P. Nelson, which lease has been set forth in full in the findings of fact herein, and that the plaintiffs are estopped from denying the validity of said lease, [157] except as to the first parcel described in said lease as "all of the bench ground lying opposite No. 1 on Little Eldorado Creek and extending up to No. 8 on Bonanza Creek."

4. That said lease is binding and is to remain in force and effect except as to the parcel above mentioned, the same as though it had been executed by the plaintiffs, and that all rights and privileges accruing under said lease to the said O. A. Nelson are hereby decreed to accrue to and to be exercised by the plaintiffs the same as though said lease were made by the plaintiffs instead of the said O. A. Nelson.

5. That the leases given to Charles Hawkins referred to in the findings of fact herein be and the same are hereby decreed to be of no further force and effect.

6. That the lease given to Charles McMahan has been surrendered and is of no further force and effect.

7. That neither plaintiffs nor any of the defendants recover costs, attorneys fees or disbursements.

To the foregoing decree and to each and every part thereof the plaintiffs and defendant O. A. Nelson except, and exceptions are allowed plaintiffs and the said O. A. Nelson.

Dated at Valdez, Alaska, this 13th day of March, 1935.

SIMON HELLENTHAL,  
District Judge.

Entered Court Journal No. 17, Page No. 698,  
Mar. 13, 1935.

[Endorsed]: Filed March 13, 1935. [158]

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### III.

That thereafter and on the 6th day of May 1935, at a date less than three months from the date of entry of said Decree, plaintiffs filed in said cause a petition for re-hearing, as follows:

[Title of Court and Cause.]

#### PETITION FOR RE-HEARING.

To the Honorable Simon Hellenthal, Judge of the  
above-entitled Court:

The petition of the plaintiffs, W. E. James and Agnes James, respectfully sheweth unto your Honor that, being aggrieved by the Decree entered in this cause on the 13th day of March, 1935 by the terms of which Decree certain mining property and personal property, as in said Decree fully described, were found by this Honorable Court to be subject to a certain lease dated the 17th day of April, 1933, by and between O. A. Nelson, as first party, and N. P. Nelson, second party, said instrument being set forth in full in the Findings of Fact heretofore made and entered in this cause, being numbered V in said Findings of Fact, and covering a certain portion of the property of the plaintiffs, as described in said Decree, based upon other Findings of Fact made by said Honorable Court, which said Findings of Fact were in substance to the effect that [159] the plaintiffs acquiesced in and had full knowledge of the possession of the said N. P. Nelson of the property described in said lease; and further, that it also appears, as a matter of record, that the said N. P. Nelson extracted gold from said lease-hold properties, during the mining season of 1934, in the approximate sum of Nine Thousand Dollars (\$9,000.00) but that no knowledge thereon was made to the plaintiffs in accordance with the terms of said lease as to the amount of royalties to be paid to the said O. A. Nelson, the lessor in said lease named, and petitioners also aver that said Decree, by its provisions and terms, did not make direction or determination

with reference to said 10% of said Nine Thousand Dollars (\$9,000.00).

WHEREFORE, your petitioners humbly pray that your Honor will grant a re-hearing and said petitioners submit themselves to such orders as the Court may make if this application for re-hearing be without merit.

L. V. RAY,  
Of Attorneys for Plaintiffs.

Receipt of copy acknowledged this 6th day of May, 1935.

THOMAS M. DONOHOE,  
Attorney for Defendants.

[Endorsed]: Filed May 6, 1935. [160]

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#### IV.

That on May 9, 1935, the Court made the Order permitting the filing of said petition for re-hearing and continuing the same over for determination to a term of Court held at Valdez, Alaska, on the 15th day of July, 1935, said Order being, as follows:

[Title of Court and Cause.]

#### ORDER.

The above entitled cause came on to be heard on the application and petition of plaintiffs for a re-hearing of said cause and it appearing to the Court that said application and petition for said re-hear-



ing has been filed within the term within which said cause was heard and that the present session of the above entitled court, now being held at Cordova, will soon adjourn and the intervening time will not permit the court to hear and pass upon said petition for re-hearing,

IT IS ORDERED, that said petition for re-hearing be, and is hereby ordered filed and the same is continued over for determination as to whether or not said petition for re-hearing should be granted until the next session of this court to be held at Valdez, Alaska, within the Third Division of the Territory, on the 15th day of July 1935. [161]

Done at Cordova, Alaska, this 9th day of May, 1935.

SIMON HELLENTHAL,

District Judge.

Entered Court Journal No. C-4 Page No. 411  
May 9, 1935.

[Endorsed]: Filed May 9, 1935. [162]

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V.

That thereafter by Orders duly made, the consideration of said Petition for re-hearing was continued from time to time until October 26, 1935, by Order duly made in such respect and on said date of October 26, 1935, the following Order was made in said cause:

[Title of Court and Cause.]

## HEARING ON PETITION FOR REHEARING.

Now at this time this cause came regularly on for hearing on plaintiffs' petition for re-hearing heretofore and on the 9th day of May, 1935, filed in the above entitled cause, plaintiffs being represented by L. V. Ray, Esq., and the defendants by Thos. M. Donohoe, Esq.,

Thereupon, the Court being fully and duly advised in the premises, directed the attorneys for both the plaintiffs and the defendants to draw up and submit a supplemental and final decree for his consideration.

Entered Court Journal No. 18, Page No. 57, October 26, 1935. [163]

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## VI.

That thereafter a Supplemental and Final Decree in said cause was filed by the Judge of said Court on the 9th day of November 1935, to which Supplemental and Final Decree the Plaintiffs excepted and exceptions were duly allowed to said Plaintiffs, which Supplemental and Final Decree was and is as follows:

In the District Court for the Territory of Alaska,  
Third Division.

No. S-356.

W. E. JAMES and AGNES JAMES,  
Plaintiffs,  
vs.

O. A. NELSON, et al.,  
Defendants.

### SUPPLEMENTAL AND FINAL DECREE.

This matter came regularly on to be heard at a session of the above entitled court held at Valdez within the district and territory aforesaid, on the 26th day of October, 1935, plaintiffs being represented by L. V. Ray, of attorneys of record, and the defendants being represented by Thomas M. Donohoe, Esquire, upon plaintiffs' petition for rehearing heretofore filed in this court pursuant to an order of this court dated the 9th day of May, 1935, permitting and directing said petition for rehearing to be filed in said cause; said petition for rehearing being continued by order of this court in such regard made, to the 15th day of July, 1935, at Valdez, Alaska, and thence, for good cause shown by various orders of the court in such regard made, until the October 14, 1935, regular term of said court at Valdez, Alaska; and during said general term of October 14, 1935, at said Valdez, on the 26th day of October, 1935, the Court did direct the preparation

by counsel and submission to the court for signature a supple- [164] mental and final decree, which supplemental and final decree shall include the terms and provisions of the decree signed by the court on the 13th day of March, 1935, together with an enlargement of such terms and provisions so as to provide for the making of an annual report and account by the lessee, N. P. Nelson, to the plaintiffs in the action, and so as to also include in said decree a copy of said lease to said N. P. Nelson.

WHEREUPON the Court being fully advised in the premises and having heretofore made its findings of fact and conclusions of law, which by reference hereto are made a part of this judgment, it is

**ORDERED AND DECREED:**

1. That the plaintiffs are the owners, subject to the paramount title of the United States of America, and the mortgage herein referred to, and are entitled to the immediate possession except certain rights given to the defendant N. P. Nelson, of the following described placer mining claims, to-wit:

Those certain placer mining claims, situated upon Bonanza Creek, a tributary of Cathenda Creek; on Gold Run Creek, a tributary of Glacier Creek; on Cathenda Creek and on Little Eldorado Creek, a tributary of Bonanza Creek; all of said claims being in the White River Mining District of the Chisana Recording District, Territory of Alaska, and known and called as follows:

Discovery of Bonanza Creek

No. 1 Above Discovery on Bonanza Creek

- No. 5 Above Discovery on Bonanza Creek
- No. 6 Above Discovery on Bonanza Creek
- No. 14 Above Discovery on Bonanza Creek
- No. 15 Above Discovery on Bonanza Creek
- Discovery Fraction on Bonanza Creek
- No. 5 Fraction Above Discovery on Bonanza Creek
- Discovery on Gold Run Creek
- Discovery Annex on Gold Run Creek
- No. 1 Cathenda Creek
- No. 1 Little Eldorado Creek
- No. 3 Little Eldorado Creek
- No. 1 Fraction Little Eldorado Creek
- No. 1 Gold Bug Bench on Little Eldorado Creek [165]
- No. 2 Gold Bug Bench on Little Eldorado Creek
- No. 3 Gold Bug Bench on Little Eldorado Creek
- James Bench on Little Eldorado Creek

The notices of which are all of record in the office of the Recorder for Chisana Recording Precinct, at Chisana, Alaska, to which records reference is hereby made for a further and more complete description of said claims, and to saw mill and cabin located near the Post Office of the town of Chisana, Alaska, and to one large cabin located in the town of Chisana, Alaska, and known as the James Cabin.

And the title to said property and the mining claims be and the same is hereby quieted in the

plaintiffs W. E. James and Agnes James against the defendants, except as to the mortgage and lease referred to in the findings herein.

2. That that certain Deed and Bill of Sale executed by W. E. James and Agnes James, husband and wife, to the defendant O. A. Nelson as trustee, bearing date of April 11, 1933, recorded on April 15, 1933, in Chitina Recording Precinct, Chitina, Alaska, with O. A. Nelson as commissioner and ex-officio recorder for the Chitina Recording Precinct, Third Division, Territory of Alaska, be and the same is hereby set aside, annulled and cancelled and declared to be of no further force and effect, which said deed is set forth in full in the findings of fact herein.

3. That the defendant O. A. Nelson acted as trustee for the plaintiffs in making the lease with N. P. Nelson which lease has been set forth in full in the findings of fact herein, and that the plaintiffs are estopped from denying the validity of said lease, except as to the first parcel described in said lease as "all of the bench ground lying opposite No. 1 on Little Eldorado Creek and extending up to No. 8 on Bonanza Creek." The lease is in words and figures as follows: [166]

### LEASE

THIS AGREEMENT, made and entered into this 17th day of April, 1933, by and between O. A. Nelson, first party and N. P. Nelson, second party,



WITNESSETH:

That the first party for and in consideration of the sum of One (\$1.00) Dollar and other good and valuable considerations to him in hand paid by the second party, the receipt whereof is hereby acknowledged and of the rents, conditions and covenants to be paid and performed by the second party as hereinafter set forth does hereby lease and remise to the second party, upon the terms hereinafter expressed, the following described placer mining ground situated in the White River Mining District, Territory of Alaska, and more particularly described as follows, to-wit:

All of the bench ground lying opposite No. One on Little Eldorado Creek and extending up to No. 8 on Bonanza Creek.

No. Five Above Discovery on Bonanza Creek, 1320x660 feet, more or less,

No. Five Fraction Above Discovery on Bonanza Creek 78x660 feet, more or less,

No. Six Above Discovery on Bonanza Creek 1320x660 feet, more or less,

No. One on Little Eldorado Creek, 1320x660 feet, more or less,

No. One Fraction on Little Eldorado Creek 81x660 feet, more or less,

No. One Discovery Bench on Little Eldorado Creek 1320x660 feet, more or less,

No. Two Discovery Bench on Little Eldorado Creek 1320x660 feet, [167]

No. Three Discovery Bench on Little Eldorado Creek 1320x660 feet, more or less,

for a term to expire on the first day of **October**, 1942, (nineteen hundred forty-two), unless sooner terminated by a failure to do and perform the terms, covenants and conditions of this agreement; and the second party agrees that he will enter into possession of said hereinbefore described properties and will during the said period work, mine and prospect parts and portions thereof, and said mining operations shall be carried on by him in a workman and minerlike fashion, and in a manner having in view the preservation of the said claims as workable mines; and that from the gold extracted from said property he will pay to the said first party as royalty ten (10%) per cent of the gross amount of gold.

—Provided also that the said lessee N. P. Nelson shall have the use of the pipe, tools and equipment now on Bonanza Creek and formerly in the possession and belonging to W. E. James, and also the use of the saw mill located at Chisana insofar as the said saw mill may be owned by, in the possession of, or controlled by the said lessor.—

mined and extracted by him from said claims, which said royalty shall be paid to the first party immediately after each cleanup; that the first party hereby reserves the right to be present at each and every cleanup, either in person or by a representative, and also the right to pan the ground

for the purpose of determining the values of gold contained in said ground. [168]

The second party agrees that he will not allow any valid lien or encumbrance to be created against said property for work or labor done in mining or development of said property, or for goods, wares or material used in mining or development of the same; That the second party shall not sublet, without the consent of the First party in writing, any part or portion of the property hereinbefore described.

And it is further hereby expressly understood and agreed that in the event that the second party shall fail to comply with and perform all of the covenants, and agreements expressed herein, which said party has agreed to perform, or shall fail to pay unto the first party the royalties herein as said royalties shall become due and payable according to the terms of this lease, then and in that event the said second party shall forfeit all rights under this lease and will peaceably surrender the possession of said property unto the first party.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands this 17th day of April, 1933.

O. A. NELSON,

First Party.

N. P. NELSON,

Second Party.

Signed, sealed and delivered in the presence of  
M. N. CHASE.

4. That said lease remain in force and effect except as to the parcel above mentioned, the same as though it had been executed by the plaintiffs, and that all rights and privileges accruing under said lease to the said O. A. Nelson accrue to and be exercised by the [169] plaintiffs the same as though said lease were made by the plaintiffs instead of the said O. A. Nelson.

5. That the leases given to Charles Hawkins be cancelled and are of no further force and effect.

6. That the lease given to Charles McMahan has been surrendered and is of no further force and effect.

7. That neither plaintiffs nor any of the defendants recover costs, attorneys fees, or disbursements.

8. That the defendant, N. P. Nelson, at the close of the mining season during each year of the leasehold period contained in said lease shall report in writing the gross amount of gold extracted during such mining season from the leased premises, and deliver to the said plaintiffs, or to their agent, attorneys, or representative, duplicate receipts of all mint or smelter returns and receipts of banks evidencing such gold recovery.

To the foregoing decree the plaintiffs and the defendant O. A. Nelson except, and exceptions are allowed the plaintiffs and said O. A. Nelson.

Dated at Valdez, Alaska, This 9th of November, 1935.

SIMON HELLENTHAL

District Judge

Entered Court Journal No. 18 Page No. 107. Nov.  
9, 1935.

[Endorsed]: Filed Nov. 9, 1935. [170]

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WHEREFORE, plaintiffs respectfully pray this Honorable Court that the above and foregoing be duly approved, settled and certified as their Bill of Exceptions and that the same be made a part of the record upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and will ever so pray.

LADY WILLIE FORBUS

L. V. RAY

Attorneys for Plaintiffs-Appellants

Receipt of copy of the above and foregoing acknowledged this 27th day of January, 1936.

DONOHOE & DONOHOE

THOMAS M. DONOHOE

Attorneys for Defendants-Appellees.

[Endorsed]: Filed Jan 28 1936. [171]

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[Title of Court and Cause.]

BILL OF EXCEPTIONS APPROVAL BY  
COUNSEL

This is to certify that the foregoing Bill of Exceptions in the above entitled cause was served on me on the 27th day of January, 1936, and that I have examined the same and have no amendments to suggest thereto, and agree that the same may be

settled and signed as a Bill of Exceptions in said cause by the Honorable Judge of said Court at such time and place as the same may be presented by counsel for plaintiffs in the cause, without my being present and without further notice to me.

Dated January 28th 1936.

DONOHOE & DONOHOE  
By THOMAS M. DONOHOE  
Attorneys for Defendants [172]

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[Title of Court and Cause.]

ORDER SETTLING AND CERTIFYING  
BILL OF EXCEPTIONS

W. E. James and Agnes James, plaintiffs herein having applied to the Court for an order settling and certifying this Bill of Exceptions to be used on their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree entered herein on November 9th, 1935; plaintiffs being represented by L. V. Ray, of their attorneys of record and the defendants being represented by Thomas M. Donohoe, Esq. of the firm of Donohoe & Donohoe; and it appearing that all parties having consented without further notice, to the submission of plaintiffs prepared Bill of Exceptions to the Court for settlement and certification; and it further appearing that said Bill of Exceptions contains a condensed statement of the evidence given in said cause, and that the same has by an order in such respect made been approved as



complete and correct; and the Court having inspected said Bill of Exceptions and being fully advised in the premises,—

IT IS ORDERED, that said Bill of Exceptions is hereby allowed, approved and settled, and that the same be filed herein forthwith as a part of the record of this cause upon appeal.

IT IS FURTHER ORDERED, that this order shall be deemed and taken as a certificate of the undersigned Judge of this Court who presided at the hearing of said cause and before whom all [173] the evidence in said cause was given, that said Bill of Exceptions contains a condensed statement, in narrative form, of all the evidence given in said cause, including pertinent exhibits, upon which the said decree of November 9th, 1935 is based.

DONE by the Court and Ordered entered on this 28th of January 1936.

SIMON HELLENTHAL

District Judge

Entered Court Journal No. C-4 Page 452. Jan 28 1936.

[Endorsed]: Filed Jan 28 1936. [174]

[Title of Court and Cause.]

PETITION OF W. E. JAMES AND AGNES  
JAMES FOR APPEAL TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

The above named plaintiffs, W. E. James and Agnes James, conceiving themselves aggrieved by that certain part of the Supplemental and Final Decree made and entered in this cause on the 9th day of November, 1925, by the above entitled court, wherein said decree determines that the defendant O. A. Nelson acted as trustee and agent for the plaintiffs in making a certain lease dated April 17, 1933, to the defendant N. P. Nelson as lessee, and insofar as said decree declares the plaintiffs are estopped from denying the validity of such lease; the property covered by said lease and said lease itself being fully described and set forth in said Supplemental and Final Decree, do hereby appeal from said part of said Supplemental and Final Decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed and that a transcript of the record, papers and documents upon which said Supplemental and Final Decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals at San Francisco, California.

Dated this 30th day of December, 1935.

L. V. RAY

Of Attorneys for Plaintiffs-  
Appellants.

I do hereby acknowledge receipt of a copy for service of the above petition of W. E. James and Agnes James, appellants, on this.....day of....., 193.....

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Attorneys for Defendants-Appellees.

[Endorsed]: Filed Jan 7, 1936. [175]

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[Title of Court and Cause.]

### ASSIGNMENT OF ERRORS.

Come now the plaintiffs in the above entitled cause and file the following assignment of errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause from that certain part of the Supplemental and Final Decree made and entered in this cause on the 9th day of November, 1935, by the above entitled court, wherein said decree determines that the defendants O. A. Nelson acted as trustee and agent for the plaintiffs in making a certain lease dated April 17, 1933, to the defendant N. P. Nelson as lessee, and insofar as said decree declares the plaintiffs are estopped from denying the validity of such lease.

#### I.

The Court erred in invoking the doctrine of estoppel against the plaintiffs with reference to the lease given by defendant O. A. Nelson to defendant N. P. Nelson on April 17, 1933, upon the ground that the plaintiffs did no acts, committed no fraud,

made no representations, nor created no condition, upon which the doctrine of estoppel could be lawfully predicated. [176]

## II.

The Court erred in invoking the doctrine of estoppel against the plaintiffs with reference to the lease given by defendant O. A. Nelson to defendant N. P. Nelson on April 17, 1933, upon the ground that the essential elements of estoppel were wholly lacking, as shown by the testimony of both the plaintiffs and defendants herein.

## III.

The Court erred in invoking the doctrine of estoppel against the plaintiffs with reference to the lease given by defendant O. A. Nelson to defendant N. P. Nelson on April 17, 1933, upon the ground that the same had not been pleaded by the defendant N. P. Nelson, and he did not sustain the burden of proof with reference thereto.

## IV.

The Court erred in refusing to cancel and set aside the lease from defendant O. A. Nelson to defendant N. P. Nelson dated April 17, 1933, on the ground that the same was fictitious, the royalties grossly inadequate, the terms burdensome and contrary to public policy.

## V.

The Court erred in refusing to cancel and set aside the lease from defendant O. A. Nelson to de-

fendant N. P. Nelson, dated April 17, 1933, on the ground that the same was unacknowledged, unwitnessed, unrecorded, and constituted a cloud upon the title of plaintiffs.

## VI.

The Court erred in refusing to cancel and set aside the lease from defendant O. A. Nelson to defendant N. P. Nelson, dated April 17, 1933, on the ground that the Deed and Bill of Sale from plaintiffs to defendant O. A. Nelson, as recorded, constituted no notice, constructive or otherwise, to defendant N. P. Nelson, evidencing any right or authority on the part of defendant O. A. Nelson to lease the property covered by said lease to defendant N. P. Nelson dated April 17, 1933. [177]

## VII.

The Court erred in refusing to grant the plaintiffs an accounting from the defendants, and each of them, as prayed for in their complaint, upon the ground that the Deed and Bill of Sale theretofore given to defendant O. A. Nelson being void and set aside, all recoveries had under such void lease become the property of plaintiffs and they were immediately entitled to same.

## VIII.

The Court erred in finding that defendant O. A. Nelson acted as trustee and agent for the plaintiffs in making the lease to defendant N. P. Nelson, the trial Court having already determined that the

Deed and Bill of Sale, purporting to confer authority upon defendant O. A. Nelson as trustee, was void and of no effect.

### IX.

The Court erred in its failure to make and adopt the Findings of Fact proposed by plaintiffs designated in respect to holding the said lease to the defendant O. A. Nelson as invalid, and in respect that the plaintiffs never authorized the execution and delivery of said purported lease and never ratified the same; and that prior to the time when the defendant N. P. Nelson took possession of the property under said purported lease plaintiffs had notices posted upon such property declaring plaintiffs' ownership thereof, and warning trespassers to keep off, upon the ground that the evidence submitted will sustain no other conclusion.

### X.

The Court erred in failing to adopt and make of the proposed Conclusions of Law presented by the plaintiffs, the Second thereof, to the effect that the plaintiffs are entitled to a decree cancelling and setting aside a certain lease made and executed by defendant O. A. Nelson as lessor to the defendant N. P. Nelson as lessee, bearing date April 17, 1933, expiring October 1, 1942, covering certain mining claims and [178] property described therein.

### XI.

The Court erred in making and rendering a supplemental and final decree in this cause on the



9th day of November, 1935, with respect to that certain part of said supplemental and final decree wherein said decree determines that the defendant O. A. Nelson acted as trustee and agent for the plaintiffs in making a certain lease dated April 17, 1933, to the defendant N. P. Nelson as lessee, and insofar as said decree holds that the plaintiffs are estopped from denying the validity of such lease.

WHEREFORE, the said W. E. James and Agnes James, plaintiffs aforesaid, appellants herein, pray that said decree be reversed as to that particular part thereof herein complained of, and to which error is assigned.

Dated at Seward, Alaska, this 30th day of December, 1935.

LADY WILLIE FORBUS,

L. V. RAY,

Attorneys for Plaintiffs-  
Appellants.

[Endorsed]: Filed Jan 7 1936. [179]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING  
BOND.

This day came W. E. James and Agnes James, the plaintiffs in the above entitled action, and present their petition for an appeal, and assignment of errors accompanying the same, which petition,

on consideration of the Court, is hereby allowed and the Court allows an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that part of the Supplemental and Final Decree rendered in said cause on the 9th day of November, 1935, by the above entitled Court in respect to the provisions in said decree wherein it is held that the defendant O. A. Nelson acted as trustee and agent for the plaintiffs in making a certain lease dated April 17, 1933, to the defendant N. P. Nelson as lessee, and insofar as said decree declares that plaintiffs are estopped from denying the validity of such lease; the property covered by said lease and said lease itself being fully described and set forth in said decree, upon the filing of a bond in the sum of two hundred fifty (\$250.00) Dollars, with good and sufficient sureties to be approved by the Court, which bond shall be conditioned to the effect that said plaintiffs shall prosecute their appeal to effect and shall answer all costs if they fail to make good their said plea.

Dated at Seward, Alaska, this 20th day of January, 1936.

SIMON HELLENTHAL,

District Judge.

Entered Court Journal No. S-5, Page No. 275,  
Jan 20 1936.

[Endorsed]: Filed Jan. 20, 1936. [180]

[Title of Court and Cause.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That we, W. E. JAMES and AGNES JAMES, as principals, and L. WALN and W. C. STEWART, as sureties, are held and firmly bound unto O. A. Nelson, as an individual, O. A. Nelson, as trustee, N. P. Nelson, Charles Hawkins and Charles McMahan, defendants above named, in the sum of Two Hundred and Fifty Dollars, to be paid to the said defendants, their heirs, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

SEALED with our seals and dated this 27th day of January 1936.

WHEREAS, the above named plaintiffs have taken an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to reverse the Supplemental and Final Decree entered in the above entitled action by the District Court for the Territory of Alaska, Third Division, which decree was so rendered and entered by said Court on the 9th day of [181] November, 1935, and wherein by the terms of said decree, certain mining claims and personal property therein described were held to be vested in the said plaintiffs, subject to the paramount title of the United States and the lien

of a certain mortgage, described in said decree, but also held said mining property and said personal property subject to a certain lease dated the 17th day of April, 1933, and in which lease one O. A. Nelson is named as lessor and N. P. Nelson as lessee;

NOW, THEREFORE, the condition of the above obligation is such that if the above named W. E. James and Agnes James shall prosecute their appeal to effect and shall answer all costs, then this obligation to be void, otherwise if they fail to make good their plea to remain in full force and effect.

[Seal]

W. S. JAMES

[Seal]

AGNES JAMES

Principals

[Seal]

L. WALN

Surety

[Seal]

W. C. STEWART

Surety

United States of America

Territory of Alaska

Third Division—ss.

L. WALN and W. C. STEWART, being first duly sworn on oath, depose and say, each for himself and not [182] one for the other: That I am one of the sureties on the foregoing bonds; that I am a resident of the Territory of Alaska owning property therein; I am not a counsellor or attorney at law, marshal, clerk of any court or other officer of any court; that I am worth the sum of Two Hundred and Fifty Dollars, specified in the foregoing under-

taking, exclusive of property exempt from execution and over and above just debts and liabilities.

W. C. STEWART

L. WALN

Subscribed and sworn to before me this 27th day of January 1936.

[Notarial Seal] R. G. BAUMGARTEN

Notary Public in and for the Territory of Alaska.

My commission expires 17 September, 1939.

APPROVED This 28th day of January, 1936.

SIMON HELLENTHAL

District Judge

Copy received this 28th day of January 1936.  
O. K. as to form.

T. M. DONOHOE

Attorney for Defendants

[Endorsed]: Filed Jan 28 1936. [183]

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[Title of Court and Cause.]

CITATION ON APPEAL

To the Defendants, O. A. Nelson, as an individual, O. A. Nelson as a trustee, N. P. Nelson, Charles Hawkins and Charles McMahan, and to their attorneys, Messrs. Donohoe & Donohoe, and Thomas M. Donohoe, Esq.:

You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Fran-

cisco, California, in said circuit, within thirty days from the date hereof pursuant to an order allowing an appeal, duly entered in the Clerk's office in the District Court for the Territory of Alaska, Third Division, at Seward, Alaska, in that certain action wherein W. E. James and Agnes James are plaintiffs and O. A. Nelson, as an individual, O. A. Nelson as trustee, N. P. Nelson, Charles Hawkins and Charles McMahan are defendants, and wherein the said W. E. James and Agnes James are appellants, to show cause, if any there be, why the Supplemental and Final Decree entered therein on the 9th day of November, 1935, with respect to Clause 3 thereof wherein, by the terms of such decree the trial court held that the defendant O. A. Nelson acted as trustee and agent for the plaintiffs in making that certain lease dated April 17, 1933, to [184] the defendant N. P. Nelson, as lessee, and insofar as said decree, in said Clause 3 thereof, declares the plaintiffs are estopped from denying the validity of such lease; the property covered by said lease and said lease itself being fully described and set forth in said Clause 3 of said Supplemental and Final Decree, shall not be reversed and corrected and why a speedy justice should not be done to them, the said W. A. James and Agnes James, appellants, in their behalf.

WITNESS the Honorable Simon Hellenthal,  
Judge of the District Court for the Territory of



Alaska, Third Division, and the seal of said Court hereunto affixed this 28th day of January 1936.

SIMON HELLENTHAL

Judge of the District Court for the Territory of Alaska, Third Division.

Attest:

[Seal]

DERICK LANE

Clerk of said Court

By.....

Deputy

Entered Court Journal No. C-4 Page No. 453.  
Jan 28 1936.

Due service and a copy hereof acknowledged this 28th day of January, 1936.

THOMAS M. DONOHOE

Attorney for Defendants.

[Endorsed]: Filed Jan 28, 1936. [185]

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[Title of Court and Cause.]

STIPULATION RE PRINTING TRANSCRIPT  
OF RECORD.

IT IS STIPULATED between the attorneys for the parties respectively that in printing the record of this case for use in the United States Circuit Court of Appeals, Ninth Circuit, all captions shall be omitted after the title of the cause has once been printed, and the words "Title of Court and

Cause'' and the name of the paper or documents shall be substituted therefor. All other parts of the record shall be printed.

Dated this 28th day of January, 1936.

L. V. RAY,

Of Attorneys for Plaintiffs  
and Appellants.

THOMAS M. DONOHUE,

Attorney for Defendants and  
Appellees.

[Endorsed]: Filed Jan 28 1936. [186]

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[Title of Court and Cause.]

PRAECIPE.

To the Clerk of the District Court, Territory of  
Alaska, Third Division:

You will please make, certify and transmit, at the expiration of ten days from the date hereof, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, a true copy of all the following indicated portions of the record in the above entitled cause, as the transcript to be used on the appeal of W. E. James and Agnes James, plaintiffs, from the judgment rendered herein on the 9th day of November, 1935, to-wit:

1. Complaint.
2. Demurrer of defendant N. P. Nelson.

3. Demurrer of defendant Charles Hawkins.
4. Demurrer of defendant Charles McMahan.
5. Demurrer of defendant O. A. Nelson, individually and as trustee.
6. Hearing on demurrer.
7. Opinion on demurrer.
8. Order overruling demurrers of all defendant.
9. Separate answer of defendant N. P. Nelson.
10. Separate answer of defendant Charles Hawkins. [187]
- 10½. Separate answer of defendant O. A. Nelson.
11. Separate answer of defendant Charles McMahan.
12. Reply to answer of O. A. Nelson.
13. Reply to answer of N. P. Nelson.
14. Reply to answer of Charles Hawkins.
15. Reply to answer of Charles McMahan.
16. Motion to amend complaint by interlineation.
17. Hearing on plaintiffs' motion to amend complaint by interlineation; order thereon, with order that defendants' answers to the pleadings as amended stand as filed.
18. Proposed Findings of Fact of Plaintiffs —“Eighth” Finding.

19. Proposed Conclusions of Law of plaintiffs—"Second" Conclusion.
20. Notation of acceptance of service by attorney for defendants, and endorsement thereon by trial judge refusing to make and find said Findings of Fact and Conclusions of Law; allowance of exceptions to plaintiffs March 13, 1935.
21. Proposed decree presented by plaintiffs, together with proof of service thereof, and exception allowed plaintiffs to the refusal of the Court to sign such proposed decree.
22. Findings of Fact and Conclusions of Law as prepared and signed by the Court.
23. Decree.
24. Petition for rehearing.
25. Notice upon petition for rehearing.
26. Order on petition for rehearing.
27. Order of August 5, 1935, setting time for hearing upon Petition for Rehearing for September 9, 1935.
28. Order continuing petition for rehearing to September 11, 1935.
29. Order continuing petition for rehearing to Valdez October term. [188]
30. Order of October 26, 1935.
31. Supplemental and Final Decree.
- 31½. Affidavit of no Opinion.
32. Bill of Exceptions.
33. Order settling and certifying Bill of Exceptions.

34. Petition for appeal.
35. Assignment of Errors.
36. Order allowing appeal and fixing bond.
37. Bond on appeal.
38. Citation on appeal.
39. Stipulation relative to printing of record.
40. This praecipe.

Dated at Seward, Alaska, this 27th day of January, 1936.

L. V. RAY,

Of Attorneys for Plaintiffs.

Service of the foregoing praecipe, by receipt of copy thereof, acknowledged this 28th day of January, 1936.

THOMAS M. DONOHOE,

Attorney for Defendants,

In Cause No. S-356.

[Endorsed]: Filed Jan 28 1936. [189]

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[Title of Court and Cause.]

### ORDER EXTENDING TIME.

This matter coming on on the application of the plaintiffs requesting thirty days' additional time to prepare and file the record on appeal in the above entitled cause and the court being fully advised;

IT IS HEREBY ORDERED that the plaintiffs have thirty days additional to prepare and file the record and bill of exceptions in the above entitled

cause and the plaintiffs are given said additional thirty days.

Ordered this 24th day of February 1936.

SIMON HELLENTHAL,

District Judge.

Entered Court Journal No. V-18, Page No. 140,  
Feb 24 1936.

[Endorsed]: Filed Feb 24 1936. [190]

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CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO TRANSCRIPT OF RECORD.

United States of America,  
Territory of Alaska,  
Third Division.—ss.

I, DERICK LANE, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed 190 pages, numbered from 1 to 190, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the praecipe filed in my office on the 28th day of January, 1936; that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$43.40, has been paid to me by Agnes James, one of the appellants herein.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 5th day of March, 1936.

[Seal] DERICK LANE,  
Clerk of the District Court, Territory of Alaska,  
Third Division.

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[Endorsed]: No. 8147. United States Circuit Court of Appeals for the Ninth Circuit. W. E. James and Agnes James, Appellants, vs. O. A. Nelson, as an individual, O. A. Nelson, as a trustee, N. P. Nelson, Charles Hawkins and Charles McMahan, Appellees. Transcript of Record Upon Appeal from the District Court of the United States for the Territory of Alaska, Third Division.

Filed March 14, 1936.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

